

Citation: *R. v. Master Seaman W.L. Boyle*, 2009 CM 2019

Docket: 200920

**STANDING COURT MARTIAL
CANADA
BRITISH COLUMBIA
CANADIAN FORCES BASE ESQUIMALT**

Date: 17 November 2009

PRESIDING: COMMANDER P.J. LAMONT, M.J.

HER MAJESTY THE QUEEN

v.

**MASTER SEAMAN W.L. BOYLE
(Accused)**

FINDING

(Rendered orally)

[1] Stand up, Master Seaman Boyle. This court finds you not guilty of the first charge and not guilty of the second charge. You may be seated.

[2] Master Seaman Boyle is charged with two offences under the *National Defence Act*. In the first charge, a charge that he behaved in a disgraceful manner contrary to section 93 of the *National Defence Act* and in the second charge, that he committed an act to the prejudice of good order and discipline contrary to section 129. Both charges allege the same particulars: that is, that Master Seaman Boyle on 23 January 2009 aboard HMCS Nanaimo inserted his penis into Able Seaman Crangle's glass of chocolate milk and the charges are laid in the alternative.

[3] All the witnesses agree that the events took place in the Junior Ranks Mess aboard HMCS NANAIMO, off shore, Seattle on or about the date alleged in the charge. Present in the mess at the time were several members of the ship's crew. It appears that a dispute erupted between the accused, Master Seaman Boyle, and Able Seaman Crangle concerning whether or when Able Seaman Crangle would refill the supply of milk for the mess. Able Seaman Crangle absented himself from the mess perhaps in order to obtain a further supply of milk. In the absence of Able Seaman Crangle, Master Seaman Boyle took Able Seaman Crangle's partially consumed glass of chocolate milk, apparently, he turned his back on some or all of the remaining members of the mess present, unzipped the coveralls he was wearing and made a motion in the area of his genitals. Leading

Seaman Mitchell testified that he saw Master Seaman Boyle insert his penis into Able Seaman Crangle's glass of chocolate milk. The other witnesses, called for the prosecution, observed a motion consistent with this action, but did not apparently see what Leading Seaman Mitchell testified that he saw.

[4] Master Seaman Boyle testified in his own defence. He testified apparently that he attempted to simulate some action with the glass of chocolate milk. It is clear that his actions, whether simulated or not, gave the impression to other members of the mess present that he, Master Seaman Boyle, had inserted his penis into Able Seaman Crangle's glass of milk. Perhaps that was the impression that Master Seaman Boyle wished to leave with the members of the mess who were present and to whom he had turned his back. In any event, I am left with a case in which Leading Seaman Mitchell testifies that he saw the act alleged and Master Seaman Boyle denies it.

[5] The prosecution at court martial, as in any criminal prosecution in a Canadian court, assumes the burden to prove the guilt of the accused beyond a reasonable doubt. In a legal context, this is a term of art with an accepted meaning. If the evidence fails to establish the guilt of the accused beyond a reasonable doubt, the accused must be found not guilty of the offence. That burden of proof rests upon the prosecution and it never shifts. There is no burden upon the accused to establish his or her innocence. Indeed, the accused is presumed to be innocent at all stages of a prosecution unless and until the prosecution establishes by evidence that the court accepts the guilt of the accused beyond a reasonable doubt.

[6] Proof beyond a reasonable doubt does not mean absolute certainty, but it is not sufficient if the evidence leads only to a finding of probable guilt. If the court is only satisfied that the accused is more likely guilty than not guilty, that is insufficient to find guilt beyond a reasonable doubt and the accused must therefore be found not guilty. Indeed, the standard of proof beyond a reasonable doubt is much closer to absolute certainty than it is to a standard of probable guilt. But reasonable doubt is not a frivolous or imaginary doubt, it is not something based on sympathy or prejudice. It is a doubt based on reason and common sense that arises from the evidence or the lack of evidence. The burden of proof beyond a reasonable doubt applies to each of the elements of the offence charged; in other words, if the evidence fails to establish each element of the offence charged beyond a reasonable doubt, the accused is to be found not guilty.

[7] With respect to the element of the offence charged in the first charge, the issue, it seems to me, is whether or not the events occurred in the manner to which Leading Seaman Mitchell testified. And if so, whether that conduct amounts to disgraceful conduct within the meaning of the *National Defence Act*. I agree with the submission of the prosecution that the standard to be applied in a case such as this is an objective one that asks the question whether the conduct in all the circumstances was shockingly unacceptable.

[8] In my view on all the evidence I have heard, even accepting that the matters unfolded in the manner to which Leading Seaman Mitchell testified, the conduct of the accused is not shockingly acceptable as that and it's therefore not disgraceful behaviour as that term is understood in the *National Defence Act*. The accused is not guilty with respect to the first charge.

[9] With respect to the second charge, the issues again are whether or not the events occurred in the manner to which Leading Seaman Mitchell testified and if so, whether that act on the part of the accused prejudiced good order and discipline as that term is understood in section 129 of the *National Defence Act*.

[10] In my view, there is very little evidence at all in this case of the effect of the conduct of the accused on good order and discipline. It is true that there is some evidence of the effect of what these individuals perceived on their relationship to the accused, Master Seaman Boyle. At least, one of the witnesses called on the part of the prosecution, testified that he had, in an answer to a question by the prosecutor, testified that he, himself, had some difficulty with trusting Master Seaman Boyle as a result of this incident at least insofar as turning his back on Master Seaman Boyle while he was consuming something in the mess. Other witnesses called by the prosecution were asked the same question and apparently they, themselves, didn't have much or any of a difficulty with trust in respect of Master Seaman Boyle as a result of what they saw in this incident. So, to that extent there is an inconsistency in the evidence called by the prosecution as to whether or not there was prejudice to good order and discipline in this case.

[11] On all the evidence, I find that I am not persuaded that the prosecution has established beyond a reasonable doubt that there was prejudice to good order and discipline as a result of the behaviour of Master Seaman Boyle on the date alleged. He is not guilty with respect to charge number 2.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major S. MacLeod, Canadian Military Prosecution Service
Counsel for Her Majesty The Queen

Major J.A.E. Charland, Directorate Defence Counsel Services
Lieutenant-Colonel J.-M. Dugas, Directorate Defence Counsel Services
Counsel for Master Seaman W.L. Boyle