



COURT MARTIAL

Citation: *R. v. Rotchford*, 2010 CM 2016

Date: 20100902

Docket: 200954

Standing Court Martial

Halifax Courtroom
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Acting Sub-Lieutenant J.J. Rotchford, Accused

Before: Commander P.J. Lamont, M.J.

REASONS FOR FINDING

(Orally)

[1] Acting Sub-Lieutenant Rotchford, this court finds you not guilty of the charge.

[2] At the conclusion of the evidence led by the prosecution of one charge against Acting Sub-Lieutenant Rotchford that he wilfully made a false statement in a document made by him for official purposes contrary to section 125(a) of the *National Defence Act*, counsel for the accused moved, pursuant to Queen's Regulations and Orders, article 112.05(13), for a finding of not guilty on the ground that the evidence for the prosecution failed to establish a *prima facie* case.

[3] At the conclusion of the argument, I reserved to consider the matter overnight; upon resuming the next day, I dismissed the application and undertook to give reasons at a later time. The defence elected to call no evidence and I heard the addresses of counsel yesterday.

[4] The prosecution at court martial, as in a criminal prosecution in any 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.

[5] Absence of 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 an imaginary doubt. It is not something based upon sympathy or prejudice; it is a doubt based upon reason and common sense that arises from a consideration of 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.

[6] I have already referred to the elements of the offence charged in this case and I find it necessary to deal only with the issue of whether the accused made a false entry in the statutory declaration document, Exhibit 3. Despite the rather broad wording of the charge that particularizes that the accused "made a statutory declaration indicating that he had met the conditions for recognition of a common law relationship," Exhibit 3 is not worded in this way. Rather, the statutory declaration takes the form of four averments of fact.

[7] In the course of his address, counsel for the prosecution specified that it was the first averment that was alleged to be a false statement when the declarant states "that we have resided together for at least one year preceding the application for recognition" of status as a common law partner. Thus, the prosecution assumed the burden of establishing a negative; that is, that the accused was not residing with Lisa Michelle Starr for the period of one year prior to 22 June 2009.

[8] The evidence of the living arrangements of the accused and Ms Starr is sparse indeed. Lieutenant Keyser testified that as far as he knew they moved in together as of late August or early September 2008, and that prior to that time, the accused was away from Kingston on training for some unspecified period while his partner remained in Kingston. Lieutenant Keyser was aware of the one year cohabitation requirement, but he considered that the circumstances of the accused met the requirement as a result of the witness's review of a document on the DIN.

[9] The document the witness referred to was not put before me, but it may have been the policy instrument CMP Instruction 15/06 Common Law Partnership, Exhibit 5, before me. This document contemplates that the separation for military reasons of parties to a marriage-like relationship may not disentitle the parties to the recognition by the CF of their conjugal relationship. The only other evidence on this issue is a document from which I am asked to infer that the accused was living in student quarters at RMC as late as September or October of 2008.

[10] The prosecution argues that this evidence corroborates the evidence of Lieutenant Keyser that the parties started living together in the late summer of 2008, but in my view, the documentary evidence seems to be equally consistent with the inference that the accused was paying for accommodation in the student dormitory at the same time as he was residing with Ms Starr.

[11] On this evidence, I cannot say that I am persuaded beyond a reasonable doubt that the accused was not residing together with Ms Starr as early as 21 June 2008. I find him not guilty.

[12] Before leaving this case, I wish to observe that counsel for Acting Sub-Lieutenant Rotchford attacked the credibility of the witness, Private Day. It was submitted that the witness misadvised Acting Sub-Lieutenant Rotchford as to the policy and process to make a claim for status as a party to a common law relationship and that Private Day bore an animus toward Acting Sub-Lieutenant Rotchford. Having watched the witness testify and considered her evidence, I am of the view that there is no basis upon which to conclude that her uncontradicted evidence of her dealings with Acting Sub-Lieutenant Rotchford should not be accepted. I do accept it.

[13] In my view, the witness discharged her duties in a proper manner with due regard for the policies and practises in the orderly room as she understood them. If Acting Sub-Lieutenant Rotchford disagreed with anything that he was told by the witness, he had his remedies. Private Day is not responsible for the policies she was required to implement. Acting Sub-Lieutenant Rotchford, an officer in the Canadian Forces, takes responsibility for the documents he or she signs as part of his or her official responsibilities.

Counsel:

Major A.T. Farris and Lieutenant(N) E.J. Fox, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander B.G. Walden, Directorate of Defence Counsel Services
Counsel for Acting Sub-Lieutenant J.J. Rotchford