



COURT MARTIAL

Citation: *R. v. Rotchford*, 2010 CM 2015

Date: 20100901

Docket: 200954

Standing Court Martial

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 THE APPLICATION CONCERNING THE EXISTENCE OF A NO *PRIMA FACIE* CASE ON ONE CHARGE

(Orally)

[1] At the close of the case for the prosecution yesterday, I heard an application by counsel on behalf of Acting Sub-Lieutenant Rotchford to dismiss the charge on the basis that the evidence for the prosecution did not establish a *prima facie* case. The application is dismissed.

[2] Note B to QR&O 112.05 provides:

Note (B)

A *prima facie* case is established if the evidence, whether believed or not, would be sufficient to prove each and every essential ingredient such that the accused could reasonably be found guilty at this point in the trial if no further evidence were adduced. Neither the credibility of witnesses nor weight to be attached to evidence are considered in determining whether a *prima facie* case has been established. The doctrine of reasonable doubt does not apply in respect of a *prima facie* case determination.

I have held in other cases that note B substantially captures the test to be applied in criminal cases in Canada where the defence seeks a directed verdict of not guilty at the conclusion of the case for the prosecution.

[3] The inquiry is directed to the essential elements of the offence charged to determine whether on each element there is some evidence upon which a reasonable jury, properly instructed, could convict. If there is, then the prosecution must be permitted to proceed. If not; that is, if there is no such evidence on at least one element of the offence charged, then the accused is immediately entitled to a finding of not guilty.

[4] I discussed the elements of the offence created by section 125(a) in the case of *Corporal J. Wells*, decided 14 January 2004. As they apply to the present case, the elements are as follows:

1. the identification of the accused as being the offender;
2. the date and place of the offence as particularized;
3. a false entry in a document;
4. that the document is made by the accused;
5. that the document is required for official purposes;
6. an intention on the part of the accused to author the document; and
7. a blameworthy state of mind, either wilfulness or negligence with respect to the falsity of the document.

[5] In this case, counsel submitted that there was no evidence as to the first element, identification of the accused before the court as being the offender, and the fifth element, that the document in issue is required for official purposes.

[6] Two witnesses testified for the prosecution. Private Day testified that she dealt with a member of the Canadian Forces on 22 and 23 June 2009 in the orderly room of the Royal Military College Kingston. From her answers to the questions of counsel, it is clear that she understood the individual she dealt with to be the accused before this court, but at no point in her examination was she asked whether the person she knew as Acting Sub-Lieutenant Joseph John Rotchford was, in fact, present in court.

[7] At the request of the member, Private Day prepared a statutory declaration form on a computer. On the form she entered information that was supplied to her by the member, including the member's full name and service number, in support of an application for the recognition of a common law partnership between the member and an individual by the name of Lisa Michelle Starr. The member left with the form partially completed, but apparently unsigned and un-witnessed.

[8] Private Day next saw the member with the form the next day. At that point, the form had been completed with the signature blocks filled in, and accordingly, Private Day made entries into a computer system known as "PeopleSoft" to record the changes in the member's personal information.

[9] Lieutenant Keyser testified for the prosecution. He testified that at the request of his long time friend, Acting Sub-Lieutenant Rotchford, he witnessed the signature of his friend on the statutory declaration form, Exhibit 3. At no point in his examination was Lieutenant Keyser asked whether his friend, Acting Sub-Lieutenant Rotchford, was, in fact, present in this court.

[10] Counsel submitted that in the absence of any sort of in-court identification of the accused before the court as being the person known to either of the two witnesses as Acting Sub-Lieutenant Rotchford, there is no evidence on the essential element of identification. The prosecutor argues that there was no issue as to the identity of the accused as he was known to both witnesses as Acting Sub-Lieutenant Rotchford, whether or not the witnesses pointed to him in court.

[11] In *R. v. Nicholson*, (1984) 12 C.C.C. (3d) 228, Alberta Court of Appeal, Kerans J.A. stated, at pages 230 to 231:

The argument for the appellant before us proceeded on the assumption that a dock identification by an arresting officer is an integral part of the criminal process. This is a myth. That the Crown often relies upon such evidence should not permit us to think that a dock identification is a ritual as essential to a criminal trial as, say, the reading of the charge. The onus upon the Crown is to prove that the crime alleged has been committed and that the accused is the person who did it. This last, like any fact in issue, can be proved in many different ways.

[12] In the present case, the person with whom Private Day dealt supplied identifying information in the form of his full name and his service number, which she put into the computer generated form. I take judicial notice as a matter of general service knowledge that the service number assigned to a member of the Canadian Forces is a unique identifier. That same uniquely identifying service number appears in the convening order, Exhibit 1, and the charge sheet, Exhibit 2.

[13] At the opening of this trial, before he was called upon to plead, counsel for Acting Sub-Lieutenant Rotchford formally acknowledged in answer to a question from the court that the identifying particulars in Exhibits 1 and 2 are accurate. Such a statement from counsel is a routine matter of procedure before Canadian criminal courts.

[14] As Kerans J.A. further stated in *Nicholson*, page 234:

The best practice is that counsel for the defence, as an officer of the court, informs the court formally at the outset that the accused is present (or represented) by which he acknowledges that the person referred to by the informant is before the court. By tradition, the same message is conveyed by the accused entering the dock, but, because of the

danger of confusion, the better practice in busy modern court-rooms would be for the court to ask that person whether he is the accused named in the case.

[15] Therefore, unless some unknown person impersonated the accused when dealing on two occasions with Private Day and that unknown person is a long-standing friend of Lieutenant Keyser with the same surname as the accused, it follows that it was the accused now before the court who dealt with Private Day. I have no hesitation concluding that there is ample evidence to support a reasonable conclusion that the accused before the court is the individual who dealt with Private Day.

[16] Counsel also argued that there was no evidence on the fifth element above; that is, that the document in issue was required for official purposes. It is argued that in the absence of any evidence that the document was used or filed or submitted, there is no evidence as to its official character. I do not accept this submission.

[17] I agree that there is no evidence in this case that Exhibit 3, the Statutory Declaration, was, in fact, submitted or used, but I do not consider this to be an element of the offence. If the court were dealing with a document that might or might not be "required for official purposes" such as, say, a letter from one member of the CF to another, then evidence of the use made of the document might be necessary to support a reasonable conclusion that the document was required for official purposes. But here, that conclusion is amply justified by the terms of the document itself, which recite that the document is made "in the matter of a common law partnership for the purpose of the *Canadian Forces Superannuation Act* (CFSA), or service records." There is, therefore, an ample basis upon which to reasonably conclude that Exhibit 3, at the time it was made, was required for official purposes; that is, a determination as to the personal status of the individual CF member who made the document.

[18] The application for a finding of not guilty based on the lack of a *prima facie* case was, therefore, dismissed.

Counsel:

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Counsel for Her Majesty the Queen

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