

Citation: *R. v. Corporal C.P. Healy*, 2007 CM 2016

Docket: 200744

**STANDING COURT MARTIAL
CANADA
ALBERTA
CANADIAN FORCES BASE EDMONTON**

Date: 18 October 2007

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

HER MAJESTY THE QUEEN

v.

CORPORAL C.P. HEALY

(Accused)

FINDING

(Rendered orally)

[1] Corporal Healy, this court finds you not guilty of the first charge. You may break off and be seated beside your counsel.

[2] Corporal Healy is charged with one offence of pointing a firearm contrary to section 87 of the *Criminal Code of Canada*, which is made a service offence by section 130 of the *National Defence Act*. At the opening of his trial by Standing Court Martial, the prosecution withdrew a second charge of careless use of a firearm.

[3] The events underlying the charge of pointing a firearm occurred in the Internet computer trailer at Camp Nathan Smith in Kandahar, Afghanistan. On the date alleged in the charge, 18 July 2006, Corporal Healy was seated at one of the eight computers in the trailer. For no reason apparent to anyone, including Corporal Healy, he unholstered his service pistol, a 9-mm Sig Sauer, and raised his arm. The central issue in this trial is whether in so doing he pointed his weapon at a fellow soldier, Corporal Anderson, who was seated at the computer across the aisle that divides the two rows of computer booths.

[4] 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.

[5] 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.

[6] 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] The rule of reasonable doubt applies to the credibility of witnesses in a case, such as this case, where the evidence discloses different versions of the important facts that bear directly upon the issues. Arriving at conclusions as to what happened is not a process of preferring one version given by one witness over the version given by another. The court may accept all of what a witness says as the truth, or none of what a witness says, or the court may accept parts of the evidence of a witness as truthful and accurate. If the evidence of the accused as to the issues or the important aspects of the case is accepted, it follows that he is not guilty of the offence. But even if his evidence is not accepted, if the court is left with a reasonable doubt, he is to be found not guilty. Even if the evidence of the accused does not leave the court with a reasonable doubt, the court must look at all the evidence it does accept as credible and reliable to determine whether the guilt of the accused is established beyond a reasonable doubt.

[8] Before Corporal Healy can be found guilty of the offence, the prosecution must satisfy the court beyond a reasonable doubt that he directed or aimed the firearm intentionally. In other words, the firearm must be held as if the other person, Corporal Anderson, was his intended target.

[9] Warrant Officer London testified that he saw the accused, while seated, raise his right arm with his pistol in his right hand, extending his arm across the aisle that divided the two rows of booths in the trailer, at the head level of Corporal Anderson, who was seated in the booth across the aisle. Warrant Officer London

demonstrated in court the movement he says was made by the accused at the time. When he made the demonstration in court, his right arm was extended straight out, parallel to the floor, with the pistol at shoulder level.

[10] Two of the other witnesses, Corporal Cruickshanks, called by the prosecution, and the accused, who gave evidence on his own behalf, agree with the evidence of Warrant Officer London that the accused unholstered his service pistol and raised his right arm, but they both testified that the weapon was held at a downward angle, aimed at the floor. Corporal Cruickshanks also demonstrated the action of the accused at the relevant time. According to his demonstration, the right arm was not fully extended and the pistol was pointed in about a 45 degree angle to the floor.

[11] I accept the evidence of Corporal Cruickshanks when he described the motion of the accused with his service pistol. Corporal Cruickshanks occupied the computer booth behind Corporal Anderson and across the aisle from Corporal Healy. He had an excellent opportunity to observe the relevant events, which took place in very close proximity to him. His attention was drawn to the actions of the accused when he heard the sound of the pistol being unholstered. His evidence as to the direction in which the weapon was pointed was clear and concise and consistent throughout his examination-in-chief and the cross-examination.

[12] I prefer the evidence of Corporal Cruickshanks on this point, to that given by Warrant Officer London. Warrant Officer London was seated behind Corporal Cruickshanks awaiting his turn on one of the computers. From his vantage point, Warrant Officer London had a clear view down the centre aisle of the trailer, but, in my view, his observations of both Corporal Healy and Corporal Anderson must have been hindered to some extent by the walls that separate the individual booths in the computer trailer. The photographs of the interior of the trailer taken shortly after the events show the individual computer booths partitioned off with walls that are, no doubt, intended to afford some measure of privacy to users of the computers. I do not accept Warrant Officer London's evidence that he had an unobstructed view of the heads of both Corporal Healy and Corporal Anderson at the relevant time. This is clearly demonstrated by the photographs, Exhibits 10 and 11.

[13] It follows from this, and I find as a fact on all the evidence, that Corporal Healy pointed his weapon at the floor, and not at the head of Corporal Anderson. I am not satisfied beyond a reasonable doubt that Corporal Healy aimed his pistol at Corporal Anderson; accordingly, he is not guilty of the offence charged.

[14] Officer of the Court, return Corporal Healy's headdress to him. Corporal Healy, you may withdraw. The proceedings of this court martial in respect of Corporal Healy C.P. are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

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