Citation: *R. v. Sergeant T.P. Craig,* 2007 CM 2008

Docket: 200706

STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
14 WING GREENWOOD

Date: 20 June 2007

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

HER MAJESTY THE QUEEN
v.
SERGEANT T.P. CRAIG
(Accused)

FINDING
(Rendered orally)

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

[2] Sergeant Craig is charged with one offence contrary to section 83 of the *National Defence Act*; that is, disobedience of a lawful command, in that he, on or about 1 September 2006, at or near Canadian Forces Base Greenwood, Nova Scotia, requested that a Mr Charles Ross change Sergeant Craig's work schedule contrary to an order of Warrant Officer Moffatt, given 28 July 2006.

[3] On the view I take of the case, the important issue is whether, indeed, the accused made the request alleged in the charge. As I am not satisfied to the required standard that the charge, as specified, has been established on the evidence, the accused is entitled to be found not guilty.

[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. 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.

[6] 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.

[7] The elements of the offence of disobeying a lawful order were correctly stated by the prosecutor in the course of his address. I am satisfied that the identity of the accused and the date and place of the offence are established. There is also no doubt in my mind that the email communication of 28 July 2006, from Warrant Officer Moffatt to the accused, Exhibit 4, constituted a lawful order, and that the order was given by a superior officer as that term is defined in section 2 of the *National Defence Act.* I find that the accused knew that Warrant Officer Moffatt was a superior officer, and he was certainly aware of the terms of the order as evidenced by his email reply dated 1 August 2006. However, for the reasons that follow, I am not satisfied beyond a reasonable doubt that the accused, in fact, disobeyed the order of Warrant Officer Moffatt. Nor am I satisfied that the accused intended to disobey the order.

[8] The evidence disclosed that the accused was assigned to work as an escort for civilian contract workers engaged in work on the base at Greenwood. Mr

Charles Ross acted on behalf of the contractor to coordinate the installation of new avionics equipment on aircraft of the Canadian Forces. His duties included scheduling civilian commissionaires to escort the civilian workers in the course of their duties. At the request of the accused's chain of command, he took on the accused as an escort in order to accommodate some workplace limitations apparently placed upon the accused. Although he was working, in a sense, for Mr Ross, the accused remained subject to the orders of his chain of command. His immediate supervisor, Warrant Officer Moffatt, became aware of some difficulties with changes to the escorts work schedule, which were apparently requested by the accused from time to time, on what was considered to be short notice. As a result, Warrant Officer Moffatt communicated the order referred to in the charge by email dated 28 July 2006, and addressed to the accused in clear and unambiguous terms as follows, "Future requests for change in your schedule are to go through me and not Mr Ross."

[9] Mr Ross testified that he prepared the work schedule for the escorts on Thursdays for the following week. At the time in question, the accused was alternating day and evening shifts with a commissionaire by the name of Campbell. Mr Ross testified that he prepared a work schedule on Thursday, 31 August, for the following week commencing Monday, 4 September, and that the accused was scheduled to work a 10-hour shift commencing at 1400 hours on Monday the 4th. He further testified that he discussed the schedule with the accused when the accused returned to work Friday morning, 1 September, after returning from a period of leave. According to Mr Ross, the accused told him that he had spoken to Campbell about Campbell working that particular shift. Ross could not get ahold of Campbell to confirm this, but the accused assured Ross that Campbell would work the Monday shift beginning at 1400 hours, and Ross appears to have accepted this assurance. In fact, Campbell did work the Monday shift as evidenced by the actual hours worked compiled by Ross in the document Exhibit 6.

[10] The accused testified in his own defence, and gave evidence of the Friday morning discussion he had with Ross, but in very different terms. He testified that Campbell contacted him in the late afternoon of Thursday, 31 August, requesting to change shifts with the accused on the Monday, and the accused informed him that he could not help him. Then, the next day, he simply told Ross about Campbell's request to him. The accused testified he did not work the Monday shift because he was not scheduled for it.

[11] It is plain and obvious that the two versions of the Friday, 1 September conversation given in evidence are inconsistent. If it were simply a question of deciding whose evidence to prefer, I would accept the evidence of Ross over that of the accused. I was impressed with the careful manner in which Mr Ross testified, and having observed the accused as he testified, I have doubts that he was trying to assist the court with the whole truth. But, as I have already stated, that is not the legal test. Mr Ross

prepared a memorandum on 14 September 2006, setting out the details of his conversation with the accused on 1 September, the document is marked Exhibit 8. In the memorandum, Mr Ross states, in reference to the 1 September conversation with the accused, "My intention was to ask Sergeant Craig if he would work a 10-hours shift on Monday. Sergeant Craig informed me Commissionaire Campbell requested to work days the following week and wanted to work the evening shift. Sergeant Craig assured me that Commissionaire Campbell will be in for Monday. I then proceed to make up the schedule reflecting Sergeant Craig's statements."

[12] In my view, this version of the conversation is more reliable, as at the time Mr Ross prepared the memorandum he was referring to events that occurred but two weeks previously. At no point in the memorandum does Mr Ross claim that the accused made any request of him to change the schedule as alleged in the charge. Indeed, this evidence raises some doubt in my mind as to whether the work schedule was, in fact, prepared on 31 August, or whether it was not prepared until some time after the conversation of 1 September. As a result, I am not satisfied that there was a change to the schedule that would require the accused to go through his chain of command as ordered, or that a change was requested by Sergeant Craig. For the same reasons, I am not satisfied that the accused intended to disobey the order of Warrant Officer Moffatt when he said what he said to Mr Ross on 1 September. He is accordingly not guilty of the charge.

[13] Officer of the Court, return Sergeant Craig's headdress to him. Sergeant Craig, you may withdraw. The proceedings of this court martial in respect of Sergeant T.P. Craig are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

COUNSEL:

Major J.J. Samson, Regional Military Prosecutions Atlantic
Counsel for Her Majesty the Queen
Lieutenant-Commander J.C.P. Levesque, Directorate of Defence Counsel Services
Counsel for Sergeant T.P. Craig