



COURT MARTIAL

Citation: *R v Moriarity*, 2012 CM 3018

Date: 20121018

Docket: 201229

Standing Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty, the Queen

- and -

Captain D.J. Moriarity, Accused

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

Restriction on publication: By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the persons described in this judgement as the complainants shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR FINDING

(Orally)

[1] Captain Moriarity is charged with four offences, the two first ones for sexual exploitation, the third one for sexual assault, and the fourth one for invitation to sexual touching contrary to section 152 of the *Criminal Code*.

[2] The evidence concerning this matter is essentially composed of the judicial confession made by the accused, being Exhibit 3 in this trial. I reviewed the judicial confession and the essential elements of each offence.

[3] Concerning the first charge, the charge of sexual exploitation concerning Cadet K.D., for incidents that occurred the month of July and August 2010, concerning the identity, the date, place, and the fact that the victim was a young person, I found the

evidence mainly in paragraphs 6 and 7 of the judicial confession. And, also, concerning the fact that the accused touches, directly or indirectly, with a part of the body or with an object any part of the body of the victim and that the contact was for a sexual purpose, I also find evidence related to these essential elements of the offence in paragraphs 6 and 7. And finally, that the accused was in a position of trust or authority towards the victim, I find the evidence in paragraph 22 of the judicial confession. And I come to the conclusion that the prosecution, on the first charge, has proven beyond a reasonable doubt all the essential elements of the offence. So the prosecution discharged his burden of proof.

[4] Concerning the second charge, it's also sexual exploitation contrary to section 153 of the *Criminal Code*, concerning the identity, the date, the place, the fact that the victim was a young person, that the accused touches, directly or indirectly, with a part of the body or with an object any part of the body of the victim and the contact was for a sexual purpose, I found the evidence in paragraph 8 of the judicial confession. And the fact that the accused was in a position of trust or authority towards the victim, I found the evidence at paragraph 22 of the judicial confession. And I am of the opinion that the prosecution has proved beyond a reasonable doubt all the essential elements of this offence.

[5] The third charge was withdrawn.

[6] Now I'm going with the fourth charge, which is sexual assault involving now the Cadet R.D. for incidents that allegedly occurred between January and July 2011. The identity of the accused, the date and place the incident took place, the fact that the accused used directly or indirectly the force on the complainant, that the contact between the accused and the complainant was of a sexual nature, that the use of force by the accused was made without consent of the complainant, and the use of force by the accused was intentional, and the fact that the accused knew or was reckless of or wilfully blind to the lack of consent of the part of the complainant, all the evidence to support all of these essential elements of the offence have been found in paragraphs 17, 18, and 19 of the judicial confession. And to that extent I am satisfied that the prosecution has proved beyond a reasonable doubt all those essential elements for this offence.

[7] Concerning the fifth charge, invitation to sexual touching contrary section 152 of the *Criminal Code*, the prosecution has to prove beyond a reasonable doubt the identity, the date, the place, the victim was under the age of 16 years old, that the accused invites, counsels, or incites the victim to touch, directly or indirectly, with a part of the body or with an object any part of the body of any person, including the accused, and the contact was for a sexual purpose. Concerning the identity, the date, the place, the invitation by the accused for and the contact for a sexual purpose, I found the evidence related to these essential elements of the offence in paragraph 17 of the judicial confession. And concerning the fact that the victim was under the age of 16 years old, the evidence was found by the court in paragraph 16, but also paragraph 10, is helpful in that regard. So I am satisfied that the prosecution has proved beyond a reasonable doubt all these essential elements of the offence.

[8] Concerning the sixth charge, this charge was withdrawn by the prosecution, so the court is left with no other charge to deal with.

FOR THESE REASONS, THE COURT:

[9] **FINDS** you guilty of the first, second, fourth, and fifth charges.

Counsel:

Lieutenant-Colonel S. Richards, Canadian Military Prosecutions Service
Counsel for Her Majesty, the Queen

Major S. Collins, Captain Bruce, and Lieutenant-Commander M. Létourneau,
Directorate of Defence Counsel Services
Counsel for Captain D.J. Moriarity