Citation : *R v Corporal M.S. Labrie*, 2008 CM 1021

Docket: 200844

STANDING COURT MARTIAL
AREA SUPPORT UNIT VALCARTIER
QUEBEC
CANADA

DATE: September 26, 2008

PRESIDING: COLONEL MARIO DUTIL, CHIEF MILITARY JUDGE

HER MAJESTY THE QUEEN
v.
CORPORAL M.S. LABRIE
(Offender)

SENTENCE
(Rendered orally)

OFFICIAL ENGLISH TRANSLATION

[1] The Court, having accepted and recorded your plea of guilty on the second charge for an offence of having wilfully done an act that was likely to cause bodily injury to a person, in this case to your own person, an offence under section 127 of the *National Defence Act*, the Court now finds you guilty of this charge. Regarding the first charge, the Court directs a stay of proceedings.

[2] The circumstances surrounding this affair are quite simple; that is, in February 2007, while doing exercises in the United States as a field engineer in which you were part of the enemy forces, you picked up a wet artillery simulator at the end of the day. Next, you were observed to open it with your pocketknife and pour the powder contained inside the artillery simulator out onto the ground, saying to one of your colleagues, [TRANSLATION] “Look, it has a time fuse”. The rest is history. Your colleague stood back. You moved some distance away, made a small pile with the rest of the powder and lit a cigarette. Once you had finished or nearly finished your cigarette, you spoke to your colleague, saying, [TRANSLATION] “Watch this”. That was when your colleague turned around again and you placed your cigarette in the powder. Obviously, the resulting explosion stunned your colleague, who felt the heat even though he was a dozen feet away from the device. As for you, the explosion resulted in

first degree burns to your right hand and the right side of your face. You had to receive medical attention, which included your evacuation to a hospital near the exercise area and subsequent repatriation to Canada. In addition to being unable to participate in the end of the exercise with your colleagues, you were unable to perform your military duties for 14 days because you were on sick leave. At that time, since it is your occupation and you had received sufficient training by then, you clearly knew that an artillery simulator is an explosive device, and today you are living proof that such a device can cause serious bodily injury or extensive property damage.

[3] Following that incident, your chain of command deemed it appropriate to take administrative action against you in connection with your conduct, action that resulted in a written caution for a period of six months, not to mention the fact that your chain of command required you to speak, on several occasions in an instructional context, about the incident in which you were involved and injured. Furthermore, Warrant Officer Comeau testified that you showed remorse during your mandatory instruction period and that, in his opinion, you had understood the message or that you were then in fact becoming an entirely credible spokesperson on how dangerous and utterly inappropriate this behaviour was, especially for someone who is a combat engineer.

[4] It has long been recognized that the military authorities must be able to ensure internal discipline effectively, not only through the military courts, but also by any measures they may deem appropriate. In this case, in addition to the administrative action taken, the military authorities and the Director of Military Prosecutions believed that, in the circumstances, it was entirely appropriate for you to face formal charges on account of your conduct, particularly because of the need to emphasize the general deterrence and denunciation of such conduct in the context of a disciplined armed force and the need for a disciplined armed force. Therefore, prosecution of your conduct was deemed important and necessary in the circumstances, despite the administrative action already taken. This speaks to the seriousness and gravity of the act you wilfully carried out. However, although today it is a matter of imposing a sentence for the act to which you have pleaded guilty, the fact remains that the Court must impose, as is its duty, the minimum punishment necessary in the circumstances.

[5] Today, counsel have jointly submitted to the Court that the appropriate, fair and mimimum sentence in the circumstances should consist of a reprimand and a fine of $1,000. The defence, with the prosecution’s consent, is asking the Court to exercise its discretion and allow you to pay this fine in five equal consecutive payments of $200 a month. Counsel are fully aware that this Court is not bound by their joint submission and has full discretion to accept or reject it. Counsel also know that the Court, in exercising its discretion, should not reject the joint submission of counsel, especially when it is produced by experienced counsel, unless the joint submission is contrary to public order or such that it would bring the administration of justice into

disrepute, for example, if the proposed sentence were outside the range of sentences normally imposed in similar circumstances.

[6] Today, the prosecution was unable to refer the Court to truly similar decisions and further told the Court that offences of this type are not a widespread problem. However, I agree, and I put the question to the prosecution earlier on during his representations as to sentencing; I believe that this type of offence—offences contrary to section 127 of the *National Defence Act* in connection with the handling of explosive substances, be it wilfully or negligently—are offences that are not only extremely serious when committed wilfully, as shown by the maximum sentence of imprisonment for life, but also inherently serious in the context of a disciplined and, above all, operational armed force, especially when committed by armed forces members who are specialists in combat arms, including combat engineering. Therefore, the Court fully agrees with the fundamental reasons given by the prosecution, and acknowledged by counsel for the defence in this case, that the needs or paramount factors that must be taken into account here, or must be taken into account by the Court, are general deterrence and denunciation of this conduct.

[7] The Court agrees with counsel that this is not a case where specific deterrence should be a factor, and I am satisfied that not only your unfortunate experience with the wounds you personally suffered, but also the direct consequences that have already ensued, that is, the action taken against you by your chain of command in connection with this incident, and, last, the proceedings brought before this Court which have made you a principal figure in this Court Martial, or the principal figure in today's Court Martial, the combination of those three elements is sufficient, I believe, to satisfy the Court that you have understood, that you have learned your lesson and that you will now serve, and continue to serve, as an example of what not to do when handling explosive substances.

[8] On the matter of rehabilitation, I believe that your rehabilitation was already underway long before today as a direct result of the action taken against you by your chain of command, and here I am referring to the formal presentations you were asked to make at the time to share your experience of the inappropriate handling you engaged in back then.

[9] I therefore accept the recommendations of the prosecution and the defence, and further accept not only the sentence to be imposed but also, in so doing, the reasons in support of this recommendation. Although persons found guilty of this offence are liable to imprisonment for life, it must be understood that, in the circumstances of the case, these are circumstances situating this offence as sitting relatively low on the scale of gravity for this particular offence. I also accept the recommendations or opinion of counsel present today that the Court must take into account the mitigating factors, such as your participation in the investigation, your

admission of responsibility from the start, the remorse you subsequently expressed and your plea of guilty; there is also the fact that your counsel informed the prosecution of this plea as early as possible. Therefore, this does indeed attest to your remorse in the circumstances and your taking responsibility for these events. The Court also accepts, as a mitigating factor, the fact that you perform your military duties adequately and properly and that your superiors are satisfied with your performance and do not fear that you will be a repeat offender in this area.

[10] The prosecution brought up, as a possible mitigating factor, the delay between the commission of the offence and the laying of charges. In the circumstances of this case, I do not believe that this is a mitigating factor; rather, it is simply a neutral factor. Therefore, the Court gives it no weight in addition to its acceptance of the joint submission. I do accept your lack of a criminal or disciplinary record and your age. I believe that you have many years of military service yet to offer, and I hope that service will be exemplary. This is a blemish on your record, but you must look forward from this, not back, and learn from your mistakes. That is what you seem to have done, at least according to Warrant Officer Comeau, and you seem to have understood this for some time now.

[11] Consequently, the Court will accept without reservation the joint submissions of counsel attending today, that is, the Court will impose on you the reprimand and the fine of $1,000. I also agree to allow you to pay this fine in five consecutive equal payments of $200 a month. That begins today. I also accept the recommendation of counsel for the prosecution–I did not hear from counsel for the defence on this issue–but I agree with the prosecution that this is not a case calling for an order to be made under section 147.1 of the Na*tional Defence Act,* considering the particular circumstances of the incident in question.

COLONEL M. DUTIL, C.M.J.

Counsel:

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