



## COURT MARTIAL

**Citation:** *R v Butt*, 2012 CM 3007

**Date:** 20120502

**Docket:** 201203

Standing Court Martial

Edmonton Garrison  
Edmonton, Alberta, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Private M.E. Butt, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

[1] Private Butt, at the conclusion of a complete trial, this Standing Court Martial has found you guilty today of the first and only charge on the charge sheet for having, on 25 September 2011, at or near Kandahar Airfield, Province of Kandahar, Islamic Republic of Afghanistan disobeyed the order given by Warrant Officer Heselton to wear your ballistic eyewear.

[2] It is now my duty as the military judge who is presiding at this court martial to determine the sentence. The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct or in a more positive way, see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish in a trusting reliable manner successful missions. It also ensures that public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[3] It has long been recognized that the purpose of a separate system of military justice or tribunal is to allow the armed forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and the morale among the Canadian Forces. That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances of this case. Here, in this case, the prosecutor suggested that the court sentences you to a reprimand and fine in the amount of \$1,000. On the other end, your counsel suggested to the court that a fine in the amount of \$500 would meet military justice requirements in this case.

[4] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

- (a) to protect the public which includes the Canadian Forces;
- (b) to denounce unlawful conduct;
- (c) to deter the offender and other persons from committing the same offences;
- (d) to separate offenders from society, where necessary; and
- (e) to rehabilitate and reform offenders.

[5] When imposing a sentence, a military court must also take into consideration the following principles:

- (a) a sentence must be proportionate to the gravity of the offence;
- (b) a sentence must be proportionate to the responsibility and previous character of the offender;
- (c) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (d) an offender should not be deprived of liberty, if applicable under circumstances, if less restrictive sanctions may be appropriate in the circumstances. In short, the court should impose a sentence of imprisonment or detention only as a last resort, as it was established by the Court Martial Appeal Court and the Supreme Court of Canada decisions; and

- (e) lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[6] The court is of the opinion that sentencing in this case should focus on the objectives of denunciation and general and specific deterrence. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also deter others in similar situations from engaging in the same prohibited conduct.

[7] Disobeying a lawful command of a superior officer is a very serious military offence per se. As mentioned by the Court Martial Appeal Court in *Billard* and *Liwvy*, because of its fundamental function to an armed force, a lawful order must be obeyed. In a military context, such offence has an impact on unit cohesion or morale since it concerns the principles of obedience to and support of lawful authority, which all Canadian Forces members must honour. To ensure the success of any mission, an armed force must be able to count on a crucial element: the respect and responsibility of military members, in all circumstances and at all times.

[8] In this case, Private Butt knew before departing the camp in the vehicle that he shall wear his ballistic eyewear once outside the wire because he was ordered to do so by a superior officer. However, just before departure, he realized that he did not have it and, from that point, he knew or should have known that he couldn't comply with the order given to that effect by Warrant Officer Heselton. Then, despite knowing that he won't be able to comply with this order, he got out of the vehicle once at the location and decided to perform his task of unloading the vehicle without saying a word about his situation. It is only when Warrant Officer Heselton challenged him with his non-compliance of the order that he admitted his failure to act in accordance with it. Essentially, Private Butt never expressly refused to obey the order, but by his actions, he implicitly demonstrated some carelessness and recklessness in the circumstances of the case. He knew about the situation but he chose to disobey the order without doing anything to make his chain of command aware about it.

[9] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors:

- (a) The court considers as aggravating the objective seriousness of the offence. You were found guilty of an offence punishable under section 83 of the *National Defence Act* for having disobeyed a lawful command, for which you are liable to imprisonment for life or to less punishment;
- (b) Second, the subjective seriousness of the offence which consists of three aspects. It must be borne in mind that this incident took place in an operational theatre which was considered as a hostile environment requiring soldiers to operate with their full personal protective equipment. That way, it minimizes any personal injury and also

decreases the chances for any soldiers to become some kind of burden to other soldiers because of being personally injured during the execution of the mission. By not wearing part of your protective equipment, you put potentially at risk yourself and others, which the lawful order given was trying to avoid.

- (c) There is also the fact that you are starting to have some acquaintances with the military justice system. The existence of an entry on your conduct sheet in 2009 demonstrates your inability once in a while to properly set things in order to avoid improper consequences on you and others. In addition to the fact that it was well known by your supervisors that you were regularly losing some parts of your personal kit on that mission, it makes it clear to the court that taking care of yourself may become a challenge for you and a constant preoccupation for others; and
- (d) Finally, you had enough experience at the time of the incident to know and demonstrate the kind of respect that you should have for commands you receive and for authorities who see to their enforcement. For one moment, you did not care about the situation and did not have any concern for the consequences for yourself and those around you. This conduct was, and is still totally unacceptable.

[10] There are also mitigating factors that I considered:

- (a) Your age and your career potential as a member of the Canadian Forces; being 25 years old, you have many years ahead to contribute positively to the society in general as well as in the Canadian Forces;
- (b) The fact that you recognized immediately the obvious situation you were in and that you clearly and fully explained to your superior what was the cause of your failure of complying with the order. Essentially, you didn't try to make any excuse for your behaviour;
- (c) The fact that you had to face this court martial, which was announced and accessible to the public and which took place in the presence of some of your peers, has no doubt had a very significant deterrent effect on you and on them. It sends the message to others that the kind of conduct you displayed regarding obedience to an order will not be tolerated in any way and will be dealt with accordingly; and
- (d) The absence of any consequences on you or others at the time of the incident. Essentially, you exposed yourself to a potential risk of injury for a relatively short period of time and the situation was resolved quickly by your superior without impacting on the conduct and the success of the mission.

[11] In addition, it has to be said that a punishment, whatever it is, will remain on your conduct sheet unless you get a pardon for the criminal record you are getting today. Reality is that your conviction will carry out a consequence that is often overlooked, which is that you will now have a criminal record and it is not insignificant.

[12] The appropriate penalties for an offence of this nature and in such context usually range from a severe reprimand to reprimand and a fine, and to only a fine in some cases. The court must reiterate that a reprimand is a serious penalty in a military context. On the scale of penalties, it is above a fine regardless of the amount. It reflects the doubt cast on the military member's commitment at the time the offence was committed. It reflects the gravity ascribed to the offence but also the offender's real hope for rehabilitation. Considering the nature of the offence, the applicable sentencing principles including sentences imposed on similar offenders for similar offences committed in similar circumstances by military tribunals, the aggravating and the mitigating factors mentioned above, I am of the opinion that a reprimand and a fine would appear as the appropriate and the necessary minimum punishment in this case.

[13] About the amount of the fine, the court does not consider that imposing an amount as suggested by the prosecution would really reflect a sentence commensurate with the gravity of the offence and the previous character of the offender, especially, in a context where there is a combination of a fine with a reprimand. The court concludes that a fine in the amount of \$250 would better represent the real meaning of this principle. As often expressed by military judges imposing a sentence, a fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of the particular case. The court does consider as an appropriate minimum and fit punishment to impose a combination of a reprimand with a fine in the amount of \$250.

**FOR THESE REASONS, THE COURT:**

[14] **SENTENCES** you to a reprimand and a fine in the amount \$250. The fine is to be paid immediately.

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**Counsel:**

Lieutenant-Commander S. Torani, Canadian Military Prosecution Services  
Counsel for Her Majesty the Queen

Lieutenant-Commander B. Walden, Directorate of Defence Counsel Services  
Counsel for Private M.E. Butt