



COURT MARTIAL

Citation: *R v Boudreault*, 2011 CM 1011

Date: 20111019

Docket: 201104

Standing Court Martial

3 Wing Bagotville
City of Saguenay, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal S. Boudreault, Offender

Before: Colonel M. Dutil, C.M.J.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

Orally

[1] Master Corporal Boudreault has pleaded guilty to the lesser and included offence of assault, contrary to section 266 of the *Criminal Code*, after charges were initially laid under section 130 of the *National Defence Act*.

[2] Counsel in attendance made a joint submission on the sentence that this Court should impose, that is, a reprimand and a \$2,000 fine.

[3] It is appropriate to emphasize that, at the time of the events at issue in this case, Master Corporal Boudreault was a corporal. He was appointed master corporal in June 2011. The circumstances surrounding this case date back to 1 June 2010, when, upon arriving at work, Caporal Girard found pieces of sheathing for copper wire all over the workshop. At the time, he was unofficially responsible for the electrical generating systems and the workshop on that day. Displeased with the situation, he

asked members of the workshop about what work had been done and which persons were responsible for the disarray. He learned that wires had been stripped to sell the copper wire at a local business in the city of Saguenay and that Corporal Boudreault had done the work, along with Corporal Marchand and Privates Marquis and Denis, who had come to help him. Corporal Girard, irritated by this state of affairs, explained to Private Marquis that what had been done was unlawful and contrary to the Wing's policy. Any wires considered junk had to be sent to Building 225 for disposal in accordance with Canadian Forces policy. Corporal Girard then tried to reach Corporal Boudreault through Corporal Marchand for an explanation of the legitimacy of these actions. However, Corporal Boudreault was participating in the G8 summit operations from 1 June 2010 until the end of June 2010.

[4] When Corporal Marchand was able to reach Corporal Boudreault, he was told by Corporal Boudreault that the money had been given to the appropriate person and that [TRANSLATION] "Corporal Girard could just mind his own business!"

[5] A few days later, Corporal Boudreault informed Master Warrant Officer Dugas of Corporal Girard's interference and the rumours that were circulating about his actions. After receiving this call, Master Warrant Officer Dugas contacted Corporal Marchand and asked him to tell Corporal Girard to immediately stop speaking ill of Corporal Boudreault and stop wrongfully accusing him of theft. That message was given to Corporal Girard.

[6] During the G8 operation, Corporal Boudreault was informed by a certain Mr. Bélanger, a co-worker, that Corporal Girard had made threatening remarks about him in his absence.

[7] However, until Corporal Boudreault returned, Private Marquis remained concerned by the accusations and sought reassurance that his actions had been lawful. He allegedly checked several times with Corporal Marchand and Corporal Boudreault about whether their actions had been legitimate. On 12 July 2010, Corporal Boudreault, still just as annoyed about the rumours that were circulating about the sale of the copper, told Private Marquis that he was going to settle the matter with Corporal Girard the next morning, before morning physical training.

[8] On 13 July 2010, at or about 0745 hours, Corporal Girard was speaking with Mr. Bouchard, another co-worker, in the workers' office for Building 123. Suddenly, Corporal Boudreault burst into the premises and, looking furious, headed for Corporal Girard, telling him [TRANSLATION] "You're done stabbing me in the back!" [TRANSLATION] "This is your first and last warning!" and [TRANSLATION] "I was working for the Forces!" Corporal Girard then tried to flee the premises by getting a hold of the door frame, but Corporal Boudreault stopped him by catching him by the shirt, after which he grabbed him firmly by the throat. He backed Corporal Girard up against the wall until, at a certain point, Corporal Girard managed to grab Corporal Boudreault by the throat as well, to free himself. During this incident, Mr. Bouchard was in shock. He shouted at Corporal Boudreault to leave Corporal Girard alone and

calm down. To put an end to the assault, Mr. Bouchard put his hand on Corporal Boudreault's shoulder and asked him to let go of Corporal Girard. Corporal Boudreault let go and left the premises without a word.

[9] Shaken by the incident, Corporal Girard swiftly informed his chain of command about it. Corporal Boudreault did the same, stating that he wished to go on leave. As a result of the altercation, Corporal Girard sustained scratches and red marks on his neck. His combat shirt was torn around the collar. Corporal Girard allegedly feared for his and his family's safety. Master Warrant Officer Dugas and Warrant Officer Gauthier told him that they would take appropriate action to resolve the situation. The wounds on Corporal Girard's neck took several weeks to heal.

[10] Following the incident, the chain of command decided to move some of the workshop members to other sections because of the strained atmosphere in the workshop. Given that each workshop member was quite versatile, Corporal Girard was transferred to other functions.

[11] On 22 July 2010, Corporal Boudreault agreed to be interviewed by the Bagotville Military Police. He stated that Corporal Girard was in need of reinforcement to address his inappropriate behaviour and comments, noting that Corporal Girard was a lost cause and would never change. Corporal Boudreault also emphasized that he had had to act as he did because he had already given Corporal Girard verbal warnings. He alleged that he had done enough talking and that it was time to act. According to him, Corporal Girard deserved this assault and that it would be a good thing for the Canadian Forces if he managed to make Corporal Girard change his ways. What is more, Corporal Boudreault was surprised about his arrest and the importance attributed to his actions. He stated that when he was a member of the Royal 22e Régiment, this was the way in which such problems were resolved and that some persons managed to change their ways.

[12] Master Corporal Boudreault joined the Canadian Forces as a member of the Regular Force, as an infantryman, in October 1993. He was an infantryman for 12½ years. During his career as an infantryman, Master Corporal Boudreault was posted for 6 years with Recce Platoon, 1 Battalion, Royal 22e Régiment, including 5 years as a sniper. Owing to physical limitations, he has since been working as an electrical generating systems technician at CFB Bagotville.

[13] On 2 November 2010, charges were laid against Master Corporal Boudreault. On 15 November, 2010, the referral of charges was sent to the Referral Authority. On 13 December 2010, the Director of Military Prosecutions received the application for referral. On 16 February 2011, charges were preferred to the Court Martial administrator. On account of the busy schedule of counsel for Master Corporal Boudreault and Master Corporal Boudreault's recent deployment to Italy during operation OP MOBILE, the trial date was set for 17 October 2011.

[14] It is well established in the case law that the Court is not bound by counsel's

joint submission on sentencing, except that the Court may reject the submission unless it is found to be inadequate or unreasonable, contrary to public order or such that it would bring the administration of justice into disrepute, for example if it were outside the range of sentences previously imposed for similar offences.

[15] Any sentence imposed by a court, be it civilian or military, must be adapted to the individual offender and constitute the minimum necessary intervention, since moderation is the bedrock principle of the modern doctrine of sentencing in Canada.

[16] In imposing an appropriate sentence on an accused for the wrongful acts that he or she has committed and the offences of which he or she is guilty, certain objectives are aimed for in light of the principles applicable to sentencing, which vary slightly from one case to the next. The fundamental purpose of sentencing in a Court Martial is to maintain military discipline and build respect for the law by imposing fair punishments having one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society where necessary;
- (d) to assist in rehabilitating offenders, in order to return them to their environment in the Canadian Forces or to civilian life; and
- (f) to promote a sense of responsibility in military members who are offenders.

[17] The sentence must also take into consideration the following principles. It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility. The sentence should also take into consideration the principle of parity in sentencing, that is, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. When contemplating a custodial sentence, the Court must consider whether less restrictive penalties may be warranted in the circumstances. Last, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances related to the offence or the offender and to account for any indirect consequence of the verdict or the sentence on the offender.

[18] Counsel's joint submission must be consistent with the abovementioned objectives and principles that apply in the present case; otherwise, the Court has no choice but to reject it.

[19] In this case, the Court considers the following circumstances to be aggravating:

- (a) Anyone convicted of the offence set out at section 266 of the *Criminal Code*, assault, is liable to imprisonment for a term not exceeding five years or to less punishment. This offence is objectively serious, although it should be emphasized that the spectrum of gravity for this offence is very broad.
- (b) Master-Corporal Boudreault decided to take justice into his own hands by using violence against a co-worker, despite his experience and presumed knowledge of the avenues of recourse available to him if he believed himself a victim of injustice or of defamatory statements made about him by Corporal Girard.
- (c) Master Corporal Boudreault's impugned conduct was planned, even premeditated, despite being guided by frustration and anger.
- (d) The victim sustained minor injuries, and the violence used by Master Corporal Boudreault was such that Corporal Girard feared for his and his family's safety.
- (e) The incident in question occurred in front of another co-worker, who was, moreover, a civilian.
- (f) Master Corporal Boudreault's assault on Corporal Girard was the final incident, which resulted, deplorably, in the reorganization of the team and new postings for certain team members. There is no doubt that these incidents played a part in undermining the workshop's operational effectiveness and morale.

[20] The Court nevertheless considers that following factors have a mitigating effect on the sentence:

- (a) Master Corporal Boudreault's admission of guilt attests to the fact that he has accepted responsibility. The Court is of the opinion that the statements by Master Corporal Boudreault, during his interview with a military police officer barely one week after the incidents, were made in a context of anger and frustration towards Corporal Girard following his remarks, which Master Corporal Boudreault considered unjustified and unacceptable. The Court believes that, today, Master Corporal Boudreault sincerely acknowledges his wrongdoings in this matter. This admission of guilt also eliminates the need for a long trial and spares numerous witnesses from having to travel.
- (b) The absence of a criminal record or conduct sheet.
- (c) Master Corporal Boudreault is a military member who, throughout a lengthy 18-year career with the Canadian Forces, has performed his

duties with professionalism both in Canada and abroad. The significant documentary evidence filed with the Court eloquently demonstrates that Master Corporal Boudreault is an extremely devoted and reliable member of the military. On many occasions, his conduct has been described as exemplary. He is reliable and trustworthy and shows distinct professionalism. The Court is of the opinion that this is an isolated action and an error of judgment in managing a conflictual interpersonal relationship with a co-worker, which relationship had already existed for quite some time.

- (d) Master Corporal Boudreault has since successfully completed the corrective measures imposed on him by his chain of command on 30 July 2010 (see Exhibit 14), including passing an anger management class and participating in monthly information sessions for a three-month period. In addition, Master Corporal Boudreault has succeeded in upholding the trust placed in him by his chain of command, which appointed him as master corporal in June 2011 in spite of the charges laid against him on 2 November 2010.
- (e) Last, Corporal Girard's actions and remarks contributed to generating and sustaining an unhealthy atmosphere between both individuals, which culminated in the altercation where he was the victim.

[21] The sentence in this case must focus on specific deterrence, rehabilitation, denunciation of the behaviour and punishment of the offender. General deterrence, required to a lesser degree in this case, is conveyed by demonstrating that all persons who take justice into their own hands, regardless of the reasons, must answer for their actions and will be prosecuted, judged and sentenced for their reprehensible actions. The joint submission by counsel is consistent with the principles and objectives of sentencing that apply in this case.

For these reasons, the Court

[22] **CONVICTS** the offender on the first charge, but for the lesser and included offence of assault, contrary to section 266 of the *Criminal Code*.

AND

[23] **SENTENCES** the offender, Master Corporal Boudreault, to a reprimand and a fine of \$2,000. The fine will be payable by equal monthly instalments of \$200 as of 15 November 2011, until it has been paid in full.

Counsel:

Major G. Roy, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

J.-P. Gagnon, Cantin Bouchard Boulianne Perron Bonneau Avocats
Counsel for Master Corporal S. Boudreault