



COURT MARTIAL

Citation: *R v Patterson*, 2011 CM 4028

Date: 20111205

Docket: 201159

Standing Court Martial

George Taylor Denison III Armoury
Toronto, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Colonel D.A. Patterson, Offender

Before: Lieutenant-Colonel J-G Perron, MJ

REASONS FOR SENTENCE

(Orally)

[1] Colonel Patterson, having accepted and recorded your plea of guilty to charge No. 1, the court now finds you guilty of this charge. You have pled guilty to having failed to handle a Browning 9-millimetre pistol in a safe manner, as it was your duty to do so, resulting in the discharge of one live round which is a neglect to the prejudice of good order and discipline. The court must now determine a just and appropriate sentence in this case.

[2] The statement of circumstances to which you formally admitted the facts as conclusive evidence of your guilt provide this court with the circumstances surrounding the commission of this offence.

[3] On the morning of 5 September 2011, at Forward Operating Base Lindsay, province of Kandahar, Afghanistan, you inserted a loaded magazine in your 9-millimetre Browning pistol in conformity with the level of alert. Having been on this level of alert for several days, it was a routine activity. You then secured your pistol in its holster.

[4] You proceeded in the direction of your office at the Operational Coordination Centre – Regional (OCC-R) on the Joint Regional Afghanistan Security Forces Compound (JRAC) while carrying a twelve-pack of water and your briefcase. You stopped at the clearing barrel to clear your weapon pursuant to the orders. As your arms were full, you cocked your weapon once and checked the chamber to ensure it was clear. Being distracted at the time, you did not realize that a loaded magazine was still in your weapon and did not cock your weapon a second time. You replaced the weapon in the holster and proceeded to your office.

[5] Approximately 20 minutes later, you noticed that the hammer of your pistol was still to the rear and the magazine still in the well. You removed the pistol from the holster, pointed it to the floor in front of you, and pulled the trigger to ease the spring not realizing that there was a round in the chamber. The weapon discharged into the concrete floor of the office. At the time a local Afghan interpreter was present in the room, about 2 to 3 metres on your right-hand side slightly in the back.

[6] No injuries occurred. The bullet superficially damaged the concrete floor. You retrieved the bullet and the casing. You immediately reported the incident to the Canadian military authorities and surrendered your weapon for inspection. You met with the military police, provided a full statement, and surrendered the retrieved bullet and casing.

[7] No other witnesses were present and there is no evidence that the shot was heard by anyone else. Thus it is highly unlikely that the offence would have been reported to Canadian military authorities had you not done so.

[8] Having reviewed the key facts in this case, I will now review the applicable law.

[9] As indicated by the Court Martial Appeal Court, sentencing is a fundamentally subjective and individualized process where the trial judge has the advantage of having seen and heard all of the witnesses, when there are witnesses, and it is one of the most difficult tasks confronting a trial judge (see *R v Tupper*, 2009 CMAC 5, para 13).

[10] The Court Martial Appeal Court also clearly stated that the fundamental purposes and goals of sentencing, as found in the *Criminal Code of Canada*¹, apply in the context of the military justice system and the military judge must consider these purposes and goals when determining a sentence (see *R v Tupper*, para 30). The purpose of sentencing is to contribute to respect for the law and the protection of society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;

¹ R.S., 1985, c. C-46

- (c) to separate offenders from society where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[11] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[12] The sentencing provisions of the *Criminal Code*, sections 718 to 718.2, provide for an individualized sentencing process in which the court must take into account not only the circumstances of the offence, but also the specific circumstances of the offender (see *R v Angelillo*, 2006 SCC 55, at para 22). A sentence must also be similar to other sentences imposed in similar circumstances (see *R v L.M.*, 2008 SCC 31, at para 17). The principle of proportionality is at the heart of any sentencing (see *R v Nasogaluak*, 2010 SCC 6, at para 41). The Supreme Court of Canada tells us that proportionality means a sentence must not exceed what is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence.

[13] The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline. The ultimate aim of sentencing is the restoration of discipline in the offender and in military society.

[14] The prosecution and your defence counsel have jointly proposed a sentence of a fine in the amount of \$1,600. The Court Martial Appeal Court has also stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[15] I will now set out the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case. I consider the following to be aggravating:

- (a) The section 129 offence is objectively a serious offence since its maximum punishment is dismissal with disgrace from Her Majesty's service. While an incident of a negligent discharge in an office space is usually considered a very serious offence, I find that the specific circumstances of this case attenuate its subjective seriousness. While you were negligent in the handling of the weapon, you were not reckless in that you pointed your pistol at the cement floor away from the other person in the room. There were no injuries or damage to military equipment;

- (b) The incident happened during the last month of a 12-month tour of duty in Afghanistan. I cannot say I agree with the prosecutor when she states this can be considered a mitigating factor since one can be easily distracted at the end of the tour. Complacency is a most dangerous enemy and the source of numerous mistakes and errors at the end of a tour of duty. We are all well aware or should be well aware of that fact. It is a leadership responsibility to ensure that every soldier is aware of this threat and to provide the required example;
- (c) You could have prevented this incident from happening on two occasions: the first time by following the correct procedure at the clearing barrel and when you noticed the hammer of your pistol was to the rear.

[16] As for the mitigating circumstances, I note the following:

- (a) You do not have a conduct sheet, you are a first-time offender;
- (b) It appears that this incident might not have been discovered by the Canadian authorities had you chosen not to report yourself to the authorities. You gave the round and the casing to the military police, provided a complete statement, and indicated you wished to plead guilty at the earliest opportunity. You demonstrated true leadership throughout this process by admitting your mistake and accepting to bear the consequences of this mistake;
- (c) I fully agree with your defence counsel that your conduct, especially the circumstances surrounding the reporting of this negligent discharge represents a conduct that truly exemplifies leadership. I agree with both counsels that this mitigating factor is the most important factor before this court. Your outstanding leadership qualities are clearly reflected in the four performance evaluation reports presented by your defence counsel. You were awarded a Meritorious Service Medal in recognition of your service during your deployment on Operation Augural, the Canadian Forces support to the African union mission in the Sudan. You were also awarded a Bronze Star Medal, an American decoration, for your meritorious service in Afghanistan;
- (d) As I have already mentioned, you were negligent, but you did not act in a manner that could have represented a danger to other persons.

[17] After reviewing the totality of the evidence, the jurisprudence, and the representations made by the prosecutor and your defence counsel, I concur that general deterrence is the prime factor to be considered. And I have come to the conclusion that the proposed sentence would not bring the administration of justice into disrepute and that the proposed sentence is in the public interest. Therefore, I agree with the joint submission of the prosecutor and of your defence counsel.

FOR THESE REASONS, THE COURT

[18] **SENTENCES** you to a fine in the amount of \$1,600.

Counsel:

Lieutenant-Colonel M. Trudel, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major S. Collins, Directorate of Defence Counsel Services
Counsel for Colonel Patterson