

Citation: *R. v. Crawley*, 2006 CM 82

Docket: S200682

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE TRENTON**

Date: 8 November 2006

PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.

HER MAJESTY THE QUEEN

v.

**Chief Warrant Officer B.J. Crawley
(Accused)**

SENTENCE

(Rendered orally)

[1] Chief Warrant Officer Crawley, having accepted and recorded your plea of guilty to the charge, the court now finds you guilty of this charge. The prosecution withdrew the second charge; therefore, the court does not have to make any finding pertaining to the second charge.

[2] The statement of circumstances, to which you formally admitted the facts as conclusive evidence of your guilt, provides this court with the circumstances surrounding the commission of the offence. Also during your testimony you provided further information concerning events surrounding the commission of the offence. While you were highly intoxicated due to your consumption of alcoholic beverages on 2 November 2005, you put your arm around the waist of Ms Kaylene Cartwright and held her by your side against her will for approximately 30 seconds. The complainant, Ms Cartwright, had just turned 16 years of age at the time of the offence and was working as a server during Wing Logistic and Engineering Mess Dinner during that evening. This incident occurred during the latter stage of the mess dinner during the dessert service. You have testified that you were so inebriated that evening that you do not remember vast portions of the mess dinner nor do you remember the incident.

[3] In determining the appropriate sentence, the court has considered the circumstances surrounding the commission of this offence, the mitigating circumstances

raised by the evidence, the aggravating circumstances raised by the prosecutor and the representations by the prosecution and your defence counsel and also the applicable principles of sentencing.

[4] The principles of sentencing which are common to both military courts martial and civilian criminal trials in Canada have been expressed

[5] The principles of sentencing which are common to both courts martial and civilian criminal trials in Canada have been expressed in various ways. Generally, they are founded on the need to protect the public and the public, of course, includes the Canadian Forces. The primary principles are the principles of deterrence that includes specific deterrence in the sense of deterrent effect on you personally as well as general deterrence; that is deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct and last but not least the principle of reformation and rehabilitation of the offender.

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

[7] The court is required, in imposing a sentence, to follow the directions set out in QR&O article 112.48 which obliges it in determining a sentence to take into account any indirect consequences of the finding or of the sentence and impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

[8] The court has also considered the guidance and it is guidance only as it is not binding upon the court for the purposes of sentencing, that guidance set out in sections 718, 718.1 and 718.2 of the *Criminal Code of Canada*. Those principles and those sections of the *Criminal Code* are there to denounce unlawful conduct, to deter the offender and other persons from committing offences, to separate the offender from society where necessary, to assist in rehabilitating offenders, to provide reparations for harm done to victims or to the community and to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community.

[9] The court has also given consideration to the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different. The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline.

[10] The court must also remember that the ultimate aim of sentencing in the military justice system is the restoration of discipline in the offender and in military society. Much has been said about discipline during these proceedings. Chief Warrant Officer Fleming described discipline as a strong attribute necessary for group morale and that it was guidance so that the troops know what is right and what is wrong. He also said that the role of the chief warrant officer in the Canadian Forces is to ensure that the principles of

leadership are instilled in non-commissioned members. He also stated that respect is earned and that personal example is paramount because it is a leadership tool.

MITIGATING FACTORS

[11] Your plea of guilty and the apology you made today to the Canadian Forces and to Ms Cartwright for making her feel uncomfortable during the mess dinner demonstrate that you feel remorse for the events of 2 November 2005 and that you assume full responsibility of your actions. Your guilty plea also prevents the complainant from testifying and therefore possibly causing her further anxiety.

[12] In your 35 years with the Canadian Forces you managed to reach the pinnacle of the non-commissioned members' rank progression that of chief warrant officer. Also, you are a first time offender.

[13] Your actions were caused by the influence of alcohol to the point that you do not remember the incident because of your level of impairment. But, faced with this situation, you immediately took action by meeting with the Wing Addiction Counsellor to discuss your problem and find a way to deal with your problem. The first step of this recovery process was your participation in the Bellwood program. Mr Mageau describes your prognosis for ongoing sobriety as being good.

[14] By your account, as well as Chief Warrant Officer Fleming's testimony, this type of behaviour is totally out of character for you and was caused by your high level of intoxication. Although both your character witnesses are friends of yours, their uncontested testimony paints you as a person who does not usually conduct yourself in the manner that caused you to be before this court today. Although intoxication helps explain your behaviour, it does not excuse it. Also, the offence charged is at the low end of the spectrum for this type of offence.

AGGRAVATING FACTORS

[15] The complainant was only 16 years old at the time of the offence. You put your arm around her waist and near her buttocks area and pulled her back to you when she tried to move away while talking to her and being highly intoxicated. This occurred during an all ranks mess dinner and was witnessed by at least three witnesses. No evidence on the rank of the witnesses was presented to this court. Therefore, the court cannot, and I repeat cannot, speculate that, in all likelihood by the very fact that you are a chief warrant officer, non-commissioned members junior to you would have witnessed this unacceptable behaviour.

[16] The complainant was deeply affected by your actions. She could not sleep that night. She cried a lot. She had to call her parents, wake them up so that they could come and pick her up and it took a few days for her to regain her composure. As her

stepfather said, "It took a few days for her to put it behind her and grow from it and get back to everyday life." Although the term "life learning experience" did not come from Master Corporal Leroux's mouth, this is not a life learning experience that a 16-year-old should be expecting to face when working as a server in a mess dinner.

[17] *R. v. Dixon* 2005 CMAC 2 (Docket CMAC-477) provides guidance to this court in the determination of the proper sentence. Although this case, *Dixon*, deals with child pornography, the principles of sentencing enunciated in this case apply to any type of disciplinary proceeding. The CMAC at paragraph 33 of the *Dixon* decision states:

In the *Woroby* case, the court has chosen to resort to the imposition of a heavy fine, among the arsenal of sentencing measures, as a means of denouncing and deterring this kind of behaviour. On appeal, the Bench of the Manitoba Court of Appeal, composed of experienced judges, reviewed the sentencing principles applicable to the determination of an appropriate fine for this kind of offence where fines are imposed. It reiterated that, as requested by section 718.1 of the Code, a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender". It then quoted paragraph 718.2(b) which requires that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances". In other words, it reasserted the principle of parity, equal and fundamental justice in sentencing. I hasten to add that the military context may, in appropriate circumstances, justify and, at times, require a sentence which will promote military objectives.

[18] The prosecution has provided this court with three cases in support of its submission of a sentence of a reprimand and a fine in the amount of 1000 to 1500 dollars.

[19] I consider Warrant Officer Lavoie's Standing Court Martial to be of relevance to the proceedings at hand. The accused, Warrant Officer Lavoie, was intoxicated during a military social function and touched a female private in an inappropriate manner. The accused pleaded guilty to a charge of harassment and a charge of drunkenness. Although the charges are different from the present case; the circumstances surrounding the offence are somewhat similar. Also of note, is the fact that the accused in that Standing Court Martial is a warrant officer and not a chief warrant officer. Warrant Officer Lavoie was sentenced to a reprimand and a fine of 750 dollars.

[20] This court believes the sentence in the present case must focus primarily on general deterrence. You have clearly made every effort to rehabilitate yourself and your efforts to deal with your addiction and your guilty plea indicate that there is no special need for specific deterrence in this matter. While your actions on 2 November 2005 were reprehensible and attacked the physical and emotional integrity of the victim, your actions and efforts to deal with your alcohol problems are noteworthy.

[21] This court believes that your chances of re-offending are minimal.

[22] Your actions had serious effects on a female teenager who should not expect to be grabbed by a drunken senior non-commissioned members or by anyone for that matter when she is working at one of our messes. The dignity of every person must be respected at all times.

[23] By virtue of your rank and the position you occupied within Wing TISS, much was expected from you. You were supposed to be an example of leadership to the junior non-commissioned members within 8 Wing. Although your actions were probably totally out of character for you, you are still responsible for your actions. Alcohol cannot be a saving grace. The strong mitigating factors in this case are also counter-balanced by the nature of your actions and the age of the complainant as well as the impact these actions have had on the complainant. Also, your rank and position must be taken into consideration when assigning blame for these actions. The appropriate sentence in such a case must be one that focuses on the principle of general deterrence, that is to say it must provide the general military population with a message that such actions are not tolerated. It must also be the sentence that is the minimal sentence necessary for the protection of the public and the maintenance of discipline.

[24] A caution or a fine in the amount of 200 dollars would surely bring the administration of military justice into disrepute and be seen as condoning such actions.

[25] Chief Warrant Officer Crawley, please stand up. Having found you guilty of the charge, the court sentences you to a reprimand and a fine in the amount of 1000 dollars. The fine shall be paid in monthly instalments of 100 dollars commencing on the first day of December 2006. If you are released from the Canadian Forces, the entire amount then outstanding shall become due and payable the day before your effective date of release from the Canadian Forces.

LIEUTENANT-COLONEL J-G PERRON, M.J.

COUNSEL

Major S. MacLeod, Directorate of Military Prosecution
Counsel for Her Majesty The Queen
Lieutenant-Commander M. Reesink, Directorate of Defence Counsel Services
Counsel for Chief Warrant Officer B.J. Crawley