



## COURT MARTIAL

**Citation:** *R v Scagnetti*, 2011 CM 4030

**Date:** 20111213

**Docket:** 201151

Standing Court Martial

Her Majesty Canadian Ship Prevost  
London, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Colonel (retired) P.E. Scagnetti, Offender**

**Before:** Lieutenant-Colonel J-G Perron, M.J.

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### **REASONS FOR SENTENCE**

(Orally)

[1] Colonel Scagnetti, 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 C8 rifle 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] At the time of the offence, you were employed at the Afghanistan National Army Command and Staff College, in Kabul, Afghanistan as the Team Leader and Senior Mentor on the Junior Officer Command and Staff Course. You were deployed on OPERATION ATTENTION in support of the Canadian Contribution Training Mission, Afghanistan.

[4] On the morning of 29 May 2011, you were in a shared office of the College when a security drill exercise was suddenly announced. You walked over to the location in the room where your Personal Protection Equipment (PPE) was stored, put on your flak jacket and began to put on your tactical vest. You had some difficulty with the zipper on your tactical vest and were unable to do it up at that time. Your movements were hurried as you attempted to respond to the drill in a timely fashion.

[5] A Canadian infantry major, who had already donned his own PPE and had unlocked the weapons cabinet located in the hallway adjacent to the office retrieved your C8 rifle from the cabinet, placed a magazine on it, and gave you your un-cocked rifle. After performing these actions, the major left the hallway to take up his assigned exercise position. You subsequently went to your assigned position in the office.

[6] Upon arriving in the office, you went to the window and pulled back the drapes. You then placed your rifle on your desk and finished getting your tactical vest zipped up and donned and adjusted your helmet, pulled on your gloves, picked up your rifle and began to turn towards the window. There were two Afghan interpreters present in the room at that time. One of the interpreters asked you whether he could ask you a question about a document. It was at this moment that your finger squeezed the trigger causing one live round to be discharged into the wall beside your desk.

[7] After ascertaining that no one had been injured, you pointed the weapon into a corner, removed the magazine and another round that was in the chamber, thereby clearing it. You then cleared the weapon a second time and placed it and the magazine on the window ledge. After doing this, you opened the window to allow the smoke from the weapon to dissipate, retrieved the spent casing from the floor and ascertained where the spent round had gone. It had passed through a bulletin board making a hole in the concrete wall behind it.

[8] On hearing the single rifle shot, the major confirmed that the hallway was “clear” of danger and then proceeded to the office. You asked the major to perform a function test on your weapon, which he did. It appeared to the major that the C8 rifle was functioning as designed. You directed the major to prepare a statement. You also asked the two interpreters to prepare and deliver to the major their own written statements. You then telephoned the Commanding Officer of Canadian Camp Kabul, a captain, to report the accidental discharge of your weapon and the subsequent actions you had taken. You also reported the matter to the Senior Mentor of the College, a French officer. Later, you also asked a Canadian sergeant to perform a function test on the weapon. It appeared to the sergeant that the C8 rifle was functioning as designed. You prepared a detailed written statement concerning the matter and submitted it to the major.

[9] Later the same day, an armourer inspected your rifle and prepared a written report. The report states that the armourer “found no faults that could cause an accidental discharge from this weapon.” Before being deployed, you had received proper training and were qualified to use the C8 rifle.

[10] 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).

[11] The Court Martial Appeal Court clearly stated that the fundamental purposes and goals of sentencing as found in the Criminal Code of Canada apply in the context of the military justice system and a military judge must consider these purposes and goals when determining a sentence (see *R v Tupper* para 30). The fundamental purpose of sentencing is to contribute to respect for the law and the protection of society, and this includes the Canadian Forces, 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;
- (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.

[12] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation or a combination of those factors. 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, at paragraph 42 of *Nasogaluak*, 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. Discipline is one of the fundamental prerequisites to operational efficiency in any armed force.

[14] The prosecution and your defence counsel have jointly proposed a sentence of a fine in the amount of \$2,000. The Court Martial Appeal Court has 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 negligent discharge of a weapon is usually considered a significant incident and should be considered a subjectively serious offence. Negligent discharges in a clearing bay or when the weapon is aimed downrange will usually be considered less serious than when the negligence occurs in other situations such as in an office or in close proximity of unsuspecting individuals. Each case must be examined on its particular facts and circumstances;
- (b) We all understand the importance of maintaining complete control over our weapons. We are trained in the proper handling of our weapons to ensure the safety of all other persons. While the court has not been informed as to how exactly a round would have found its way in the chamber of your C8 rifle and why your weapon was cocked and ready to fire, it has been informed that you take full responsibility for this negligent act. It would appear this incident came as a total surprise to you and happened as you were rushing to fulfil your responsibilities associated with the security drill exercise. Your attention was also diverted by the Afghan interpreter. No one was injured but this is only a fortunate consequence; it could well have been otherwise.

[16] While these activities might explain why your mind was focussed otherwise, they do not excuse your failure to ensure your weapon was safe and under your full control at all times. Your actions since the incident have clearly demonstrated that you, a senior and experienced infantry officer, know and understand these important and fundamental principles.

[17] As to the mitigating circumstances, I note the following:

- (a) You do not have a conduct sheet. You are a first-time offender;
- (b) While the negligent discharge was witnessed by two individuals, and overheard by a third, you immediately accepted responsibility for your actions and took positive steps to report the matter to Canadian Forces authorities; thereby ensuring that it could be properly and thoroughly investigated;

- (c) You have more than fully cooperated with the disciplinary investigation; you initiated the investigation by requesting that the Canadian major and the Afghan interpreters prepare written statements. You also indicated in a 5 July 2011 memorandum to the senior legal advisor to your deployment that you wished an early trial date because discipline had to be seen to be swift regardless of rank. You also mentioned that you thought this type of incident was the first of its kind and that "it is critical that the tone be set quickly with regards to this type of incident for the rest of the operation." You also indicated in that memorandum that you wished to plead guilty;
- (d) Such cooperation with a disciplinary investigation and a plea of guilty will usually be considered as mitigating factors. This approach is generally not seen as a contradiction of the right to silence and of the right to have the Crown prove beyond a reasonable doubt the charges laid against the accused but is seen as a means for the courts to impose a more lenient sentence because the plea of guilty usually means that witnesses do not have to testify and that it greatly reduces the cost associated with the judicial proceeding. These costs would have been substantial since two witnesses are Afghan nationals. It is also usually interpreted to mean that the accused wants to take responsibility for his or her unlawful actions and the harm done as a consequence of these actions;
- (e) There were no injuries, fortunately, and the damage to the bulletin board and wall was minimal. I am informed that the Afghan interpreters were not located in your arcs of fire at the time of the negligent discharge and that the bullet did not ricochet but remained imbedded in the concrete wall.
- (f) I have reviewed the Personnel Evaluation Reports found at Exhibit 8. They consistently describe you as an excellent performer with outstanding leadership potential. You deployed to Sierra Leone for six months in 2004-2005 as the Commander of the Canadian Task Force and to Afghanistan for approximately nine months in 2010-2011. You have had the opportunity to command your regiment and to command the 33 Canadian Brigade Group. You have served Canada well and have benefitted from a rich and fulfilling career. Unfortunately, this career must end with a slight blemish. I say slight because this offence is one of neglect and not one of wilful commission and no one was injured. Your actions vis-à-vis this incident are quite representative of who you are and what you have accomplished throughout your career.

[18] Having reviewed the totality of the evidence, the jurisprudence and the representations made by the prosecutor and your defence counsel, I agree with them that this case is not as serious as the Atkinson and Ménard courts martial. I also agree with

the prosecutor that the principle of general deterrence is the only sentencing principle that needs to be applied in the present case. I have come to the conclusion that the proposed sentence is adequate considering your rank and position at the time of the offence and the specific circumstances of the offence. I have thus 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:**

[19] **SENTENCES** you to a fine in the amount of \$2,000.

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**Counsel:**

Captain(N) J.C. Maguire, Canadian Military Prosecution Services  
Counsel for Her Majesty the Queen

Colonel D.K. Fullerton, Directorate of Defence Counsel Services  
Counsel for Colonel (retired) P.E. Scagnetti