

Citation: *R. v. Corporal J. Dubé*, 2008 CM 3009

Docket: 2007-69

**STANDING COURT MARTIAL
CANADA
QUEBEC
VALCARTIER GARRISON**

Date: 22 April 2008

PRESIDING: LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

HER MAJESTY THE QUEEN

(Prosecutor)

v.

CORPORAL J. DUBÉ

(Offender)

SENTENCE

(Rendered orally)

OFFICIAL ENGLISH TRANSLATION

[1] Corporal Dubé, the Court having accepted and recorded your admission of guilt in respect of the first charge on the charge sheet, the Court finds you guilty of this charge.

[2] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or, in a more positive way, promote good conduct. It is through discipline that armed forces ensure that their members will perform their missions successfully, confidently and reliably.

[3] As stated by Major Jean-Bruno Cloutier in his thesis “L’utilisation de l’article 129 de la *Loi sur la défense nationale* dans le système de justice militaire canadien”:

[TRANSLATION]

Ultimately, to maximize a mission’s chances of success, the chain of command must be able to enforce discipline in order to control misconduct that endangers good order, military effectiveness and, finally, the *raison d’être* of the organization, national security.

[4] The military justice system also ensures that public order is maintained and ensures that persons charged under the Code of Service Discipline are punished in the same way as any other person living in Canada.

[5] It has long been acknowledged that the purpose of a separate system of military courts or of military justice is to permit the Canadian Forces to deal with matters relating to the Code of Service Discipline and the maintenance of the effectiveness and morale of the troops. That said, any punishment imposed by a court, whether military or civil, must be as lenient as possible in the circumstances. This principle is in accordance with the duty of the Court to impose a punishment that is commensurate with the gravity of the offence and the previous character of the offender, as provided at subparagraph 112.48(2)(b) of the QR&O.

[6] In the present case, counsel for the prosecution and counsel for the defence made a joint suggestion concerning the principles of the sentence to be imposed. They recommended that the Court sentence you to a reprimand and a fine. However, they differed with respect to the amount of the fine the Court should impose. The prosecution suggested an amount of \$1000, while your defence counsel argued that an amount of \$300 would better reflect the applicable sentencing principles.

[7] The Court Martial is not bound by this recommendation. However, it is well established in case law that there must be compelling reasons to enable the Court to disregard it. It is also generally recognized that the Court should accept the recommendation unless doing so would be contrary to the public interest or would bring the administration of justice into disrepute.

[8] The Court has taken into consideration the recommendations made by counsel in light of the relevant facts as they emerge from the summary of the circumstances, and their significance. It has also considered the submissions in light of the relevant sentencing principles, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code*, to the extent that those principles are not incompatible with the sentencing provisions under the *National Defence Act*. These principles are the following:

first, the protection of the public, and the public in this case includes the interests of the Canadian Forces;

second, the punishment of the offender;

third, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences;

fourth, the separation, where necessary, of offenders from society, including from members of the Canadian Forces;

fifth, the imposition of sentences similar to those imposed on offenders who commit similar offences in similar circumstances; and

sixth, the rehabilitation and reintegration of the offender.

The Court also took account of the arguments made by counsel, as well as the case law they filed and the documents they introduced in evidence.

[9] The Court agrees with counsel for the prosecution that the need to protect the public requires the imposition of a sentence that emphasizes general and specific deterrence. Note that general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also others in similar situations from engaging in the same prohibited conduct.

[10] Here the Court is dealing with an offence of possession without lawful excuse of an explosive substance contrary to subsection 82(1) of the *Criminal Code*, namely, a smoke grenade and two thunderflashes. This is a serious offence against public order, but the Court intends to impose what it considers to be the minimum sentence applicable in the circumstances.

[11] In arriving at what it considers to be a fair and appropriate sentence, the Court has also considered the following aggravating and mitigating factors.

[12] The Court considers the following to be aggravating factors:

a. First, the objective seriousness of the offence. You have been found guilty of an offence under section 130 of the *National Defence Act* for possessing without lawful excuse an explosive substance contrary to subsection 82(1) of the *Criminal Code*. According to that subsection, any person who commits the offence in question is liable to imprisonment for a term not exceeding five years. This is, objectively, a serious offence;

b. Second, the subjective seriousness of the offence. When, in 2005, you committed the offence of taking possession of these substances without authorization, you displayed recklessness and a complete lack of judgment. First you deliberately lied in order to keep the explosive substances by declaring that you did not have any;

c. Also, despite your knowledge of the minimal danger that these substances represented, you kept them in your home without taking any precautions, thereby exposing those close to you, who did not share your knowledge of the substances, to potential danger that could have led to injury, possibly even fatal, depending on the circumstances. Your mother's alleged characterization of the substances as dynamite

demonstrates that they were perceived as potentially dangerous;

d. Third, you have abused the trust placed in you by your peers and superiors. Although this was most likely a spontaneous act to satisfy your curiosity, you betrayed their trust by lying to those around you to get what you wanted and betraying the trust of those who believed you to be telling the truth. Moreover, those same people believed that you had enough judgment to evaluate the danger accurately, given that you had more frequent exposure to that type of substance through your work. Instead of acting in accordance with the trust they placed in you, you displayed blatant recklessness by simply forgetting that you were in possession of explosive substances for an extended period.

[13] The Court considers the following to be mitigating factors:

a. By your plea of guilty, you clearly indicated your remorse and the sincerity of your intention to continue to be a very sound asset to the Canadian Forces and to Canadian society. The Court would not wish in any way to compromise your chances of success, because rehabilitation is always a key element in the sentencing of an offender.

b. The fact that you have no conduct sheet or criminal record involving similar offences.

c. Your excellent record of service in the Canadian Forces. The personnel evaluation report introduced as evidence before this Court and the testimony of Warrant Officer Isabel clearly demonstrate that ever since you confessed to committing the offence for which you are now before this Court, the professionalism, integrity and exemplary dedication you have displayed have been commendable. You quickly rebuilt the trust of those around you and have amply demonstrated that this offence has taught you an important lesson about the profession of arms: you must serve your country and your comrades before yourself. It appears that you have shown some potential for promotion to a higher rank because of the qualities you demonstrated during your deployment to a mission in Afghanistan. I encourage you to continue in this promising direction.

d. The lack of premeditation relating to the act you committed and your co-operation with the authorities responsible for investigating this case.

e. The fact that the act you committed is at the bottom end of the scale of seriousness.

f. The fact that you admitted to having committed the offence when you were confronted by the police about it for the first time. You showed remorse then, and you have continued to do so throughout the legal proceedings that have brought you before this Court.

g. The facts and circumstances of the case, in particular the fact that your action did not have concrete and adverse consequences for those close to you or the general public and that it was a single, isolated act, indicate uncharacteristic conduct on your part. Moreover, it has not been established that possession without lawful excuse of an explosive substance is a blight on or a problem in the Canadian Forces.

h. 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 colleagues, has no doubt had a very significant deterrent effect on you and on them. The message is that this kind of conduct in the work environment will not be tolerated in any way and that it will be punished accordingly. In the context of the evidence heard by this Court, it remains satisfied that you should not appear before another court for an offence of this or of any other kind in the future.

[14] Finally, Corporal Dubé, I would like to add that this incident could have been dealt with more quickly, and probably before your deployment. Given that you made clear to your counsel your intention to enter a guilty plea at the first opportunity, but for the fact that the Referral Authority took approximately five months to transmit your file to the Director of Military Prosecutions, all of the actors present today could have met earlier and dealt with this file. I am unaware of the reasons for the Referral Authority's delay, but it is clear that when such things occur they cast doubt on the intention of the highest levels of the chain of command to act expeditiously in such cases. I am not saying that this is such a case, but I hope I will not see similar situations in the future.

[15] The Court feels that the joint suggestion concerning the sentencing principle to be applied by this Court is not unreasonable in the circumstances. Consequently, the Court accepts counsel's recommendation that you be sentenced to a reprimand and a fine since this is not contrary to the public interest and will not have the effect of bringing the administration of justice into disrepute. However, it is the task of the Court to determine the amount of the fine, since the recommendations made by counsel differ in this respect.

[16] I have also considered whether this is an appropriate case for a weapons prohibition order, as stipulated under section 147.1 of the *National Defence Act*. In my view, such an order is not necessary or desirable in the interests of the safety of any persons or of the offender in the circumstances of this trial, and I will make no such

order.

[17] A fair and equitable sentence should take into account the seriousness of the offence and the offender's degree of responsibility in the particular circumstances of the case. Corporal Dubé, please stand. The Court sentences you to a reprimand and a fine of \$500.00. The fine must be paid in two consecutive monthly instalments of \$250, the first instalment beginning on May 1, 2008. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid amount is due and payable prior to your release. The Court makes no order under section 147.1 of the *National Defence Act*.

[18] The proceedings in the matter of the Standing Court Martial of Corporal Dubé are now concluded.

LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

Counsel:

Lieutenant-Commander M. Raymond, Director of Military Prosecutions, Eastern Region
Counsel for the Prosecution
Major L. D'Urbano, Director of Defence Counsel Services
Counsel for Corporal J. Dubé