Citation: *R. v. Major M.G. Rompré*, 2004CM58

Docket: S200458

STANDING COURT MARTIAL
CANADA
MONTRÉAL
MAISONNEUVE REGIMENT

Date: 28 July 2004

PRESIDING: LIEUTENANT-COLONEL M. DUTIL, military judge

HER MAJESTY THE QUEEN
Prosecutor
v.
MAJOR M.G. ROMPRÉ
(Accused)

SENTENCE
(**Delivered orally)**

OFFICIAL ENGLISH TRANSLATION

[1] Major Rompré, in determining the sentence that it considers to be appropriate and the least required in the circumstances, the Court has considered the circumstances surrounding the commission of the offences, as set out in the very complete and detailed Statement of Circumstances submitted by the prosecution, which you have acknowledged to be true, and also the evidence presented in the part of the hearing relating to sentencing, including the documentary evidence submitted by the prosecution, in addition to the evidence ordinarily submitted to the Court in relation to your personal situation, and more specifically the photographs and sketches that are in Exhibits 8 to 11 inclusive. The Court has also taken into account the evidence submitted by the defence, comprised of your own testimony and Exhibits 12 to 17 inclusive. In addition, the Court has taken into account argument by counsel and the principles that are applicable to sentencing.

[2] When an appropriate sentence is to be imposed on an accused for his wrongdoing and the offences of which he is guilty, certain principles are followed; those principles may be

stated as follows: first protection of the public, which in this case includes the Canadian forces; second, punishment and denunciation of the offender; third, deterrence, not only in respect of the offender, but also in respect of others who might be tempted to commit similar offences; fourth, rehabilitation and reform of the offender; and fifth, proportionality, sentencing parity and uniformity, where applicable.

[3] The first principle is protection of the public, and the Court must determine whether the public will be protected by a sentence designed to punish, rehabilitate or deter. How much emphasis should be placed on any of these principles depends, of course, on the circumstances, which will vary from one case to another. In some cases, the primary concern, if not the sole concern, will be to deter the accused and/or to deter other people. In those circumstances, little or no importance will be assigned to the aspect involving the rehabilitation or reform of the offender. In other cases, the emphasis will be more on rehabilitation than on deterrence. In this case, there is no doubt in the Court's mind that the emphasis must rather be placed on general deterrence, specific deterrence and denunciation of the offender, in order to protect the public and maintain discipline. These are offences that involve safety rules relating to the handling of firearms by members of the military while they are deployed in a theatre of operations. That is extremely serious. However, as I said earlier, the sentence that this Court is going to impose on you must nonetheless be the least required to meet the ends of justice and the maintenance of discipline in the Canadian Forces.

[4] In considering what sentence would be appropriate, the Court has taken the following mitigating and aggravating factors into consideration. I will begin with the aggravating factors for sentencing purposes.

> The Court considers the following to be aggravating factors:
>
> First, the objective gravity of the offence, having regard to the nature of the offence and the sentence provided by Parliament. There are two counts on a charge laid under section 129 of the *National Defence Act* for conduct to the prejudice of good order and discipline. This is an objectively serious offence. In fact, this offence is punishable by dismissal with disgrace from Her Majesty's service.
>
> Second, the subjective gravity of the offence, that is, in the context of the conduct alleged, negligent handling resulting in the discharge of a firearm, in a context in which the conduct alleged took place in an operational theatre, where the safety of every member of an operational mission depends in large part on the competence and the personal and professional discipline of their brothers in arms.

Third, the Court considers the fact that you committed your acts, or your conduct, on two occasions, within a period of three months, taking into account the fact that you did not consider yourself to be entirely comfortable handling this weapon, to be an aggravating factor. Your first incident should have been sufficient, and sufficiently alarming, for you, so that you would immediately have sought to resolve your problem, one way or another, by approaching competent people.

Fourth, the fact that you knew that you were not comfortable with handling the Browning 9mm pistol, because, among other things, you had not used it in 10 years, but also because you were left-handed and so you had improvised your own safety routine, even though, by your own admission, you believed it to be the safest possible having regard to your experience in handling weapons, knowing that your procedures did not comply with the procedures approved by the Canadian Forces. Having regard to your experience as an officer, this was a serious error in judgment. Because weapons were to be handled in actual conditions, there is no doubt in the Court's mind that you should not have self-evaluated, considering your discomfort in the handling of that weapon. The Court accepts, to a certain extent, the prosecution's position that having regard to your rank and your experience as an officer, even though you had never been deployed previously, the Canadian Forces were entitled to expect more rigorous adherence from you. You improvised. That improvisation should at least have reflected the result of prior actual consultations with competent resource people who were present at Camp Julien, and once you arrived in the theatre, having regard to your discomfort in the handling of the 9mm pistol and the fact that you had to carry that weapon in your day-to-day functions, not only for your own protection, but also for the protection of people who may have been with you or who might have needed you to assist them. When you tell the Court that you did not have access to an expert, that is not true. You had regular contact with the people from Camp Julien or you could have contacted them if necessary. The fact that a Canadian engineer with the rank of major had less experience than you in handling that pistol, and that he was not able to provide you with assistance, is not an excuse that the Court is prepared to accept from an officer who has 18 years' service. You said that you had turned your own weapon in because you no longer trusted it. It must be noted that, having regard to the evidence, it was really yourself that you should have doubted, in terms of your capacity to use it properly.

Fifth, the fact that, by your own admission, you did not follow the safety rules that applied to you. Your lawyer submitted that, having regard to your operational context and the conflicts in the rules applicable to the people who were part of Operation ATHENA as compared to the people posted to Camp Julien, you took all of the safety measures that you considered to be justified in an operational context. That

> shows your lack of judgment in the context of this case. The evidence indicates that you had no prior service in any operational context whatsoever, that this was a peacekeeping mission, and even a humanitarian mission, a mission to assist the civil authorities. You had never been in a military situation that was closely or remotely similar to the one you were in, and you had never even received the predeployment training offered to people who are deployed with their parent unit. This situation should have made you more aware of the inherent need of acting with extreme caution.

[5] On the question of mitigating factors, the Court notes that you have pleaded guilty to the 2nd and 4th counts. The prosecution seems to be saying that the Court should place little importance on the mitigating nature of your guilty plea, having regard to your testimony. The Court does not share that opinion. The evidence heard by this Court corroborates the position that your guilty plea is genuinely a sincere, serious and positive indication of the fact that you acknowledge your mistakes and that you acted negligently in your handling of your firearm.

[6] The Court also finds your records of service and your exemplary performance over several years in the Canadian Forces, as attested to by the documentary evidence submitted to the Court, but also the evidence that shows your highly satisfactory performance during your participation in Operation ATHENA within the OMC-A, to be a mitigating factor. Had it not been for these incidents, you would likely have completed your time in Afghanistan with no problem.

[7] The Court also finds the fact that the Canadian Forces should have made sure that you were sufficiently competent in the same handling of the weapon in respect of which you were negligent to be a mitigating factor. That does not mean that you could not have fired safely and effectively, or that you could not have disassembled or reassembled it safely. The evidence shows that you were not comfortable with the unloading operation. The prosecution pointed to your obligation to be proactive in that respect. That is one thing. However, having regard to your operational background and the short time between when you learned of the posting offered and the date of your deployment, and the fact that you were not deployed with your parent unit or another unit with which you could have followed all the necessary formalities of an administrative nature and relating to the competency exam, the Court is of the opinion that the Canadian Forces failed in their duty by not making sure that you were sufficiently qualified to do the work, including the elementary matter of being able to handle the personal weapon that was going to be issued to you competently and confidently – and I stress those two words, “competently and confidently”. Having regard to the wide range of functions that members of the military may perform over the course of their careers, whether in the Regular Force or the Reserve Force, it is not true that one can get an idea of the

competence of officers or of enlisted personnel in handling a specific firearm by looking at their military occupational group, their rank and their years of service, and this is particularly true as members of the military progress in experience and rank and hold administrative positions. It is therefore important to be sure of the competence of an individual who has never been deployed before. The Court accepts, in part, your lawyer's argument that your lack of training on the weapon in question before deployment contributed to making you unable to meet your duty of diligence. However, your broad experience in the handling of weapons in general should have made you even more acutely aware of the danger of using a weapon with which one is not comfortable.

[8] Fourth, the Court finds the psychological impact that these offences have had on you, and for which you are having to be treated up to the present, to be a mitigating factor.

[9] Fifth, the Court also considers the financial loss you have incurred as a result of your hasty repatriation from Afghanistan, because of these incidents. On that point, however, the evidence submitted by the defence, set out in Exhibit 16, the letter from Major-General Leslie, shows that the decision to repatriate you was justified in the circumstances. Lastly, the Court considers your financial, social and family situation to be a mitigating factor.

[10] As former Chief Justice Lamer of the Supreme Court of Canada said in *R. v. Généreux*:

> ... To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct.

[11] That is a direct quotation from *Généreux*.[1] The negligent handling of the personal weapon of a member of the military in an operational theatre, which constitutes conduct to the prejudice of good order and discipline, may, depending on the circumstances, be one of the breaches of discipline to which the former Chief Justice of Canada was referring. Why is that? Because it is a matter of the safety of members of the military and other persons present at the scene, but also of the operational effectiveness of a contingent, particularly when resources are limited and difficult to replace in the short term, but some personnel have to be repatriated because the people are unable to perform their duties.

[12] The prosecution apparently wanted to inform the Court, in argument, regarding statistics dealing with relatively similar offences during this period in Afghanistan by members

---

[1] *R. v. Généreux*, [1992] 1 S.C.R. 259.

of the Canadian Contingent. After further consideration, it did not do so. There is no doubt that this information could have been useful, and amounted to either a mitigating or an aggravating fact. However, as I said, this type of information is a fact, and, like any fact, it must be put in evidence so that the Court can refer to it. It seems that there was, at the least, some confusion between counsel regarding the question of submitting that document to the Court, and the purposes of doing so. However, notwithstanding the negotiations that took place between counsel in that regard, the Court would note that this kind of fact must be proved in accordance with the rules of evidence, unless there is consent. In addition, the Court would add that consent of the adverse party does not excuse the party who wishes to submit such information to the Court from putting it in evidence at the appropriate time, that is, when it is introducing its evidence, and not in argument. The impact of this type of offence in the community is a fact that must be proved in accordance with the rules applicable to the method of proof, and in compliance with the requirements relating to relevance as well.

[13] Prosecution counsel recommends that the Court sentence you to a reprimand with a fine of $2000 to $3000. The prosecution is not, however, asking the Court to make an order under section 147.1 of the *National Defence Act* which would prohibit you from possessing firearms. Were it not for that recommendation, the Court would have examined the advisability of making such an order in respect of the firearm in question, a 9mm Browning pistol, very seriously.

[14] Counsel for the defence submits to the Court that a sentence involving a reprimand and, if there is to be a fine, a fine of $500 to $1000, would be sufficient in the circumstances.

[15] Counsel for the defence referred to the degree of moral turpitude that you exhibited in this case. The degree of that turpitude is doubly serious in your case, and it cannot be examined separately for each of the counts in the charge. You were not able to determine that the first incident might have been caused by your incompetence in the safe handling of the weapon. In itself, the incident relating to the 2nd count would have been sufficiently serious for this Court to impose a sentence like the one referred to by your lawyer. Counsel for the prosecution is asking the Court for a more onerous sentence. The Court accepts the prosecution recommendations in this regard. However, the Court is of the opinion that the degree of negligence and turpitude that you exhibited in the context of this case must be reflected in the objective severity of the punishment or punishments that comprise the sentence, and not by the amount of the fine that accompanies the primary punishment. For these reasons, the Court finds that protection of the public and the maintenance of discipline require a more severe sentence.

[16] Accordingly, the Court sentences you to a severe reprimand and a fine of $1500. That sentence is the one that the Court considers to be the minimum sentence in the circumstances. The fine is payable in 10 equal monthly instalments, beginning on the date of sentencing. If you are released from the Canadian Forces before payment in full of the fine imposed by the Court, the balance of the fine will become due and payable immediately before the date of your release.

LIEUTENANT-COLONEL M. DUTIL, military judge

Counsel:

Major G. Roy, Regional Military Prosecutor, Eastern Region
Counsel for the prosecutor
Major L. Boutin, Directorate of Defence Counsel Services
Counsel for Major M.G. Rompré