



COURT MARTIAL

Citation: *R v Wellwood*, 2014 CM 1003

Date: 20140219

Docket: 201363

General Court Martial

2nd Canadian Division Support Base, Valcartier
Courcelette, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Major B.M. Wellwood, Offender

Before: Colonel M. Dutil, C.M.J.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR SENTENCE

(Orally)

[1] The General Court Martial found Major Wellwood guilty today: first, of the offence of resisting or wilfully obstructing a peace officer in the execution of his duty, an offence punishable under section 130 of the *National Defence Act*, contrary to section 129 of the *Criminal Code*; and, second, of an offence of prejudicing good order and discipline for behaving with contempt through his words and actions towards a member of the military police in the presence of subordinates, under section 129 of the *National Defence Act*. These offences were committed on 5 February 2012 during Exercise “Rafale Blanche,” which was held in the Beauce region, in the province of the Quebec.

[2] This Court therefore finds as proven all the facts, express or implicit, that are essential to the guilty verdicts rendered by the General Court Martial. These facts indicate that after the spouse of a Forces member taking part in the exercise with his unit made a 911 call reporting that the member had just told her that he was having

thoughts about killing himself with a firearm, a series of calls between various 911 emergency call centres led to two members of the military police, posted to the Beauce area for the duration of the exercise in a traditional role of police and peace officer, being ordered to find the individual and take appropriate measures to ensure his safety. From the outset, it was assumed that this individual belonged to 2nd Battalion, Royal 22^e Régiment. Relying on the information passed on to them, the members of the military police went to the area occupied by the service company of the 2^eR22^eR under the command of Major Wellwood. One of the members of the military police has peace officer status under section 156 of the *National Defence Act*, while the other, as a Reserve member, does not have such status. The police officer with peace officer status wore the black military police uniform. He wore a bullet-proof vest and carried a service weapon and other accessories with his military police uniform. He sat in the passenger seat of a 4x4 vehicle identified as a Military Police vehicle for conventional police operations. The other member of the military police wore combat clothing and was not armed. The police officers therefore proceeded to the gatehouse of the service company's command post, CP8, early in the evening. It was dark out. Without formally identifying themselves or announcing the reasons for their presence to the gate guard, the police officers turned on their flashing lights to gain access. The gate guard moved a barrier aside to give them access but promptly contacted CP8's tent to inform them that members of the military police had just entered the area without giving the reasons for their intrusion and described to his chain of command how they had acted. Since this sort of situation had already occurred during the exercise, a situation that the military authorities posted to this location found irritating because of staff and equipment security concerns, Major Wellwood therefore notified the members of her command post who were in CP8's tent at the time that she would deal with the situation personally. At that time, the military authorities of the 2^eR22^eR, 2nd Battalion, including CP8's command, were already aware of the situation regarding the member who had made suicidal comments, and they too were trying to locate the individual to take care of him. Neither side had all the information at this point.

[3] Major Wellwood therefore exited CP8's tent and headed towards the military police vehicle to inquire about the situation and above all to ask the police officers why their vehicle had not stopped at the gate house. She may or may not have passed by the peace officer on the way, and she then knocked on the passenger-side window of the vehicle several times before walking around the vehicle to talk to the driver, who was about to get out. Seeing what was happening, the peace officer came back and interposed himself between them. Major Wellwood asked them why they had not stopped at the gate house. The peace officer told her that he had come because of the 911 call. Major Wellwood then told him that the chain of command, including the unit commanding officer, was already aware of the situation and that the military authorities were handling it. Major Ellwood told the peace officer that this was not a Military Police matter and that the member in question was not at CP8. She again asked why the police officers had not stopped at the gate house. The situation escalated, and the peace officer replied that this was a matter for the police, not the chain of command, and that she should not confuse her rank with his police authority. At this point, both sides were taking an authoritarian tone, to say the least. The acrimonious exchanges between the

two continued until Major Wellwood asked him in no uncertain terms to leave the premises. The peace officer ignored the explicit requests of Major Wellwood, headed directly towards CP8's tent and went in to conduct his investigation even though he had been formally forbidden to do so by Major Wellwood, who passed him and returned to the tent's entrance. The acrimonious exchanges continued between them, and the peace officer pushed Major Wellwood with his hands at chest level to prevent her from telling her subordinates not to assist him in his investigation, or at least so the police officer thought. She lost her balance at the tent entrance. At that moment, the officers present in the tent intervened to find out what was going on, because of all the commotion. One of the officers asked the peace officer what he was doing in CP8's tent and how he could help him. He repeated to him the information that had already been passed on by Major Wellwood to the effect that the chain of command was already aware of the situation and that efforts were being made to find the individual. The officer escorted the peace officer out of the tent to his vehicle and gave him what information he had at the time, telling the peace officer that he would contact him by cell phone if there were any further developments. The individual was located by members of his unit a little later that evening, alone in a vehicle, near a sugar shack where a number of the battalion's members, who were off-duty that evening, had gone to watch the 2012 Super Bowl. This concludes the summary of the facts that are relevant for sentencing purposes.

[4] Imposing the right sentence so that it is just and fair is by far the most difficult task for a judge. We all know that certain objectives must be aimed for in light of the applicable principles, and these vary from one case to the next, depending on the offences and the individuals concerned. The fundamental purpose of sentencing in the Court Martial is to maintain military discipline and to build respect for the law by imposing fair sanctions having 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, in order to return them to their environment in the Canadian Forces or to civilian life; and
- e) to promote a sense of responsibility in military members who are offenders.

[5] The sentence must also take into consideration the following principles. It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility. The sentence should also take into consideration the principle of parity in sentencing, that is, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[6] Today, the prosecution is recommending a sentence consisting of a reprimand and a fine of \$2,000. Such a sentence would, according to counsel for the prosecution, promote the key objectives in this case, which are general and specific deterrence and denunciation of Major Wellwood's conduct during the evening of 5 February 2012. The prosecution submitted that recent Court Martial decisions regarding obstruction define the range of sentences applicable to such offences. I agree with this statement, but none of the decisions cited are of any help beyond this assertion.

[7] In addition to the usual administrative documents filed by the prosecution, the defence submitted the offender's most recent performance evaluation reports and a conduct sheet containing two recent commendations given or written by the Commander of Command Canada and the Commander of Land Forces Command, as they then were. The Court also considered the testimony of Major Wellwood at the trial and the sincere regret she expressed regarding her conduct on 5 February 2012. Clearly, as her conduct sheet indicates, the only entries appearing in it are commendations; therefore, she had no disciplinary or criminal record before today.

[8] The Court considers Major Wellwood's abuses themselves, in terms of her conduct, her actions and the language she used towards the peace officer during the evening in question to be aggravating factors. It matters little that the peace officer behaved in a manner that I find to be absolutely unacceptable for a representative of the law, civilian or military. In a military context, it matters little that those with peace officer powers are not subordinates, except by their rank, as the case may be, of Forces members, who are the subjects of their day-to-day duties. They are still Forces members and are themselves subject to the duties and obligations incumbent on Canadian Forces members with regard to respect towards both subordinates in rank and superior officers. However, this cannot be used as an excuse by Major Wellwood, an experienced officer, for her behaviour towards the peace officer. There can be no doubt that she reacted hastily and disproportionately. She showed a lack of judgment and self-control. I agree with the prosecution that her role required her to take a co-operative approach rather than to contribute to a confrontation that did nothing to resolve the situation. She had a duty to act with respect and professionalism. That is not what she did. As a superior officer and commanding officer, she too had a duty to respect the peace officers who were carrying out their duties and to not act in a way that undermined the legitimate respect that the persons mandated by law to protect persons and property in our civilian and military society deserve.

[9] However, this case cannot be dissociated from its factual matrix and from the context in which the events occurred, but it does teach lessons on many levels about the relationship that should exist between members of the military police and members of the Canadian Forces, regardless of their rank or duties. That said, the evidence filed before the Court clearly shows that Major Wellwood was up to that day, and continues to be, an absolutely exceptional officer in every respect who is highly regarded by her superiors. In light of her recent career history, there can be no doubt that she has already learned from this story, which took place in February 2012.

[10] I find that the particular circumstances of this case do not require that the sentence passed by the Court Martial emphasize the needs related to specific deterrence. The holding of this court martial is in itself very important in the present case to promote the objectives of general deterrence and to denounce the abusive behaviour of which Major Wellwood is accused. I would add that the sentence must also promote a sense of responsibility in military members who are offenders. This is a very serious warning to officers in situations like Major Wellwood's with regard to the standards of conduct that are imposed on them in their relations with peace officers who have an often thankless task to carry out and who are their subordinates in rank.

[11] The Court does not, however, agree with counsel for the defence's recommendation that a fine would be sufficient in the circumstances. I find that a reprimand must be part of the sentence that is passed for this sort of behaviour as regards superior officers.

FOR THESE REASONS, THE COURT

[12] **SENTENCES** Major Wellwood to a reprimand.

Counsel:

Major G. Roy, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Maj L.-P. Boutin, Defence Counsel Services
Counsel for Major B.M. Wellwood