COURT MARTIAL

Citation: *R v Deveaux*, 2012 CM 2011

Date: 20120912
Docket: 201225

Standing Court Martial

8th Canadian Hussars (Princess Louise's)
Moncton, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Warrant Officer G.A. Deveaux, Offender

Before: Commander P.J. Lamont, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Warrant Officer Deveaux, having accepted and recorded your plea of guilty to the second charge in the charge sheet, a charge of striking a subordinate, contrary to section 95 of the *National Defence Act*, and having considered the alleged and admitted facts, this court now finds you guilty of the second charge and orders a stay of proceedings in respect of the first charge.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have, as well, considered the facts of the case as described in the Statement of Circumstances, Exhibit 13, the evidence heard in the course of these proceedings, and the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness, or degree of responsibility, and character of the offender. The court is guided by the sentences imposed by other courts in previous, similar cases, not out of a slavish adherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways. Nevertheless, in imposing sentence, the court takes account of the many factors that distinguish the particular case it is dealing with, both the aggravating circumstances that may call for a more severe punishment, and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society of which, of course, the Canadian Forces is a part, by fostering and maintaining a just, a peaceful, a safe and a law-abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so necessary to the effectiveness of an armed force.

[5] The goals and objectives also include deterrence of the individual, so that the conduct of the offender is not repeated and general deterrence, so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour. One or more of these goals and objectives will inevitably predominate in arriving at a fit sentence in an individual case, yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit and just sentence should reflect an appropriate blending of these goals, tailored to the particular circumstances of the case.

[6] As I told you when you tendered your plea of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at courts martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment. Only one sentence is imposed upon an offender, whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[7] In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the finding of guilt and the sentence I am about to impose.

[8] The facts of this offence are not complicated. The offender was the administration troop warrant officer and the complainant, Corporal Blaine, was in one of the tank troops in his squadron. While poolside, at a resort located in Paphos, Cyprus, following the end of their deployment in Afghanistan, they started arguing and yelling at each other.

[9] At one point, Corporal Blaine, who was intoxicated, put his hand into Warrant Officer Deveaux's face, scratching his nose. Thereupon, Warrant Officer Deveaux punched Corporal Blaine in the face, cutting Corporal Blaine's nose and left cheek. Stitches were required to close the wound to the cheek. I accept the evidence of the witness, Master Corporal Jahjefendic, and find that at the time of the altercation, Warrant Officer Deveaux was also under the influence of alcohol, and that he punched his subordinate at least twice before other persons intervened to break up the altercation.

[10] I heard no evidence as to the effects of the injuries upon Corporal Blaine, such as the duration of the injury, whether he was off work for any period of time, or whether he continues to suffer any consequences of the punches.

[11] On these facts, the parties jointly recommend a sentencing disposition of a severe reprimand and a fine in the amount of $5000. The sentence to be pronounced is, of course, a matter for the court, but where, as in this case, both parties agree on a recommended disposition, that recommendation carries substantial weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court in the 2008 case of *Private Chadwick Taylor* have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[12] Counsel have referred to the aggravating and mitigating circumstances in the course of their addresses. This is an objectively serious offence and I may say that if there were a reasonable basis to conclude that the behaviour was part of a pattern of similar conduct, the offender might well be leaving this courtroom without his current rank. The offence was committed in full view of other persons, including other junior members of the Canadian Forces, in a foreign country, where the behaviour of Canadian soldiers should be of a high standard that will reflect well upon the Canadian Forces as an institution and the nation they serve.

[13] As regards to several mitigating factors, I attached particular significance to the prompt guilty plea in this case and I accept the submission of counsel that this should be taken as a demonstration of genuine remorse on the part of the offender, especially when taken with the fact that the offender immediately admitted his responsibility to the military police investigators. From the materials filed, I conclude that the offender has a long record of exceptional service, both to the Canadian Forces as a gifted instructor and leader in the Reserve Force, and to the wider sporting community of New Brunswick.

[14] He is a mature man of 48 years and has served in both the Regular and Reserve Force since May of 1983. The offender has no record of previous disciplinary infractions of which I am aware and I conclude that the incident giving rise to this charge was wholly out of character for the offender and most unlikely to be repeated.

[15] I do not accept the submission of counsel for the offender that the sentence in this case should be reduced because of misconduct of the state or its agents in the investigation of this incident. I am inclined to agree that the military police investigators were less than diligent in failing to interview potential witnesses and in failing to secure audio-visual recordings of interviews that were conducted. As a result, it appears that the unit conducted a fresh investigation once the final MP report was received and this was the cause of some delay before charges were finally instituted in September of 2011, some ten months after the commission of the offence, but I do not consider that any deficiencies in the original investigation by the MPs in this case justify a reduction in an otherwise fit sentence.

[16] It is true that by the time charges were laid, the offender had received and accepted an offer of a component transfer to the Regular Force and that his component transfer has been on hold, pending the disposition of these charges by court martial. Again, I consider that while this delay in the component transfer is unfortunate for the offender, it is entirely reasonable for service authorities to await the outcome of this case before proceeding with a transfer, for the reasons given by Master Warrant Officer Cormier in his email communication to defence counsel of 21 August 2012 at 0850 hours, see Exhibit 11.

[17] On all the circumstances of this case, relating both to the offence and to the offender, I cannot say that the sentence jointly recommended by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest, and accordingly, I accept the joint submission.

FOR THESE REASONS, THE COURT:

[18] **FINDS** you guilty of the second charge, for an offence under section 95 of the *National Defence Act*.

[19] **SENTENCES** you to a severe reprimand and a fine in the amount of $5000 to be paid forthwith.

Counsel:

Major P. Rawal, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Commander B.G. Walden, Directorate of Defence Counsel Services
Counsel for Warrant Officer G.A. Deveaux