



COURT MARTIAL

Citation: *R v Boudreau*, 2012 CM 4008

Date: 20120413

Docket: 201155

Standing Court Martial

Saint-Jean Garrison
Saint-Jean-sur-Richelieu, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Sergeant J.J.C. Boudreau, Offender

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Orally)

[1] Sergeant Boudreau, following a full trial, the Court has found you guilty of four charges brought under section 130 of the *National Defence Act*, namely, breach of trust by a public officer, contrary to section 122 of the *Criminal Code of Canada*, and one charge brought under section 129 of the *National Defence Act*, namely, conduct to the prejudice of good order and discipline. It now falls on me to impose an appropriate sentence, and this sentence must be the minimum punishment necessary in the circumstances to ensure discipline.

[2] The Court Martial Appeal Court of Canada (CMAC) indicates at paragraphs 30 to 33 of *Private R.J. Tupper v. Her Majesty the Queen*, 2009 CMAC 5, that a military judge must consider the fundamental purposes and goals of sentencing as found in sections 718 to 718.2 of the *Criminal Code*, R.S.C. 1985, c. C-46 (the Cr. C.). The sentence must also be “proportionate to the gravity of the offence and the degree of

responsibility of the offender” (see section 718.1 of the Cr. C.), as well as “similar to sentences imposed on similar offenders for similar offences committed in similar circumstances” (see paragraph 718.2(b) of the Cr. C.). An offender should not be deprived of liberty, if less restrictive sanctions other than imprisonment may be appropriate in the circumstances.

[3] Section 718 of the *Criminal Code* reads as follows:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society 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.

[4] Counsel for the prosecution suggests that the appropriate, minimum sentence for these offences is a term of imprisonment of 60 days. He suggests that the most important sentencing principles are denunciation and both specific and general deterrence. Your counsel, on the other hand, submits that an appropriate sentence for these offences is a severe reprimand and a fine in the amount of \$3,000 to \$5,000. To determine what constitutes the appropriate sentence in this case, I took into account the circumstances surrounding the commission of the offences as revealed by the evidence presented during the trial, your testimony and the testimony of Major Voyer during the sentencing hearing, the case law and the submissions by counsel. I analyzed these various factors in light of the objectives and principles applicable in sentencing.

[5] At the time of the offences, you were a medical technician at the Canadian Forces Recruiting Centre in Montreal, from 2003 to 2009, and you had to perform recruitment medical examinations on male and female applicants. Applicants were entitled to be able to dress and undress privately, either behind a curtain or in the absence of the examiner. Applicants had to be reminded at the beginning of the exam that they could request the presence of a chaperone. Applicants had to remain in their undergarments at all times; in the case of female applicants, this meant panties and a brassiere. All applicants had to wear shorts during the exam. Female applicants had to wear a T-shirt or a gown.

[6] The first victim reported for her medical exam on June 26, 2007, wearing jeans, a T-shirt, a brassiere and panties. She asked Sergeant Boudreau whether she had to remove her brassiere, and he replied yes. The curtain was pulled back. During the medical exam, Sergeant Boudreau raised her gown on four or five occasions and looked under her gown. He could see her breasts. While she was doing push-ups, he was facing her, looking down her gown, where he could see her breasts. The second victim reported for her medical exam on August 26, 2008, wearing jeans, a T-shirt, a brassiere and panties. She asked Sergeant Boudreau why she had to remove her brassiere, and he replied that she had to remove it because she had answered that she had had breast surgery. She closed the curtain. During the medical exam, Sergeant Boudreau raised her gown and looked under it. He could see her breasts. While she was doing push-ups, he was facing her and could see her breasts. The third victim reported for her medical exam on October 9, 2008. She asked Sergeant Boudreau whether she had to remove her brassiere, and he replied yes. She had no recollection of a curtain. During the medical exam, Sergeant Boudreau raised her gown on at least two occasions and looked under her gown. He could see her breasts. While she was doing push-ups, he was facing her and could see her breasts.

[7] The fourth victim reported for her medical exam on August 17, 2009. She was wearing a brassiere, panties and a gown during the medical exam. She had gotten changed without using the curtain, while Sergeant Boudreau was sitting at his desk, taking notes. She had felt uncomfortable getting changed in front of him. The fifth victim reported for her medical exam on September 3, 2009, wearing jeans, a short-sleeved shirt, a brassiere and panties. She asked Sergeant Boudreau whether she had to remove her brassiere, and he replied yes. She asked again whether this was necessary since the document said that she could keep her underwear on, and he again said yes. She turned her back to Sergeant Boudreau to change. She could not remember seeing a curtain. During the medical exam, Sergeant Boudreau raised her gown and looked under it. He could see her breasts. While she was doing push-ups, he was facing her, looking down the front of her gown, where he could see her breasts. His five victims all wore gowns during their medical exam.

[8] Having summarized the main facts of this case, I will now concentrate on sentencing. In determining what sentence would be appropriate, I took into consideration the aggravating and mitigating factors that follow. I will start with the mitigating factors.

- (a) Even though you have not acknowledged your guilt, you testified during the trial and during the sentencing hearing and admitted that you told your victims to remove their brassieres so that you could look at their breasts. You also admitted this during your interview with the investigator of the Canadian Forces National Investigation Service. An admission of guilt or cooperation with investigators is usually a sign of some remorse. Your counsel submits that you decided to stand trial to let the Court determine whether your actions represent a marked departure

from the standard and were therefore criminal rather than simply an administrative breach;

- (b) I will accept this explanation but only to a degree. You seem to feel some remorse. You seem to feel some regret. But your testimony and the testimonies of your victims suggest that you did not experience such feelings while you were working at the recruitment centre. Respecting applicants' privacy is a fundamental aspect of any medical exam, and you were fully aware of this. You made no attempt to respect the female applicants' privacy. You did not draw the curtain, nor did you tell them to draw the curtain, contrary to the training that you had received and to procedure. I therefore accept today that you feel some regret, but this factor does not carry as much weight as a guilty plea;
- (c) You apologized to the victims in the course of your testimony. This was acknowledged by the prosecutor, and he promises to transmit your apology to the victims;
- (d) You have no conduct sheet;
- (e) From your commanding officer's testimony, it appears that you will soon be released from the Canadian Forces. For the time being, you are being released for medical reasons, namely, reason 3B. However, as a result of this trial, your commanding officer will recommend that you be released for reason 2A, following an administrative review. This does not mean that the reason for your release will necessarily be changed; the appropriate authorities in Ottawa have the final say and will determine the reason for your release;
- (f) The disciplinary proceedings, this trial and the media attention given to the charges in January 2011 will certainly have had a dissuasive effect as in any other publicized case;
- (g) Your commanding officer described your performance as good, and you appear to have delivered an acceptable but minimal performance. Your anxiety, stress and insomnia are probably at the root of this minimal performance; and
- (h) There is little chance that you will reoffend within the Canadian Forces. It seems that you are not seeking a job in the health sector following your release. Consequently, even though little evidence was presented in this regard, I find that there is little risk of your re-offending.

[9] I will now discuss the aggravating factors.

- (a) The nature of the offence and the punishment provided for by Parliament. The maximum sentence for breach of trust by a public officer is imprisonment for a term of five years and dismissal with disgrace from Her Majesty's service for the charge brought under section 129 of the *National Defence Act*, namely, conduct to the prejudice of good order and discipline. Objectively, these are serious offences.
- (b) The offences were premeditated and were committed over a period of 26 months. You were in the habit of selecting female applicants, to the point that your supervisor, at a second meeting on the matter, had to formally order you to put an end to this practice. Even though you testified that you questioned yourself following the offences, you made no attempt to control yourself and to stop using your position.
- (c) In addition to using your position to satisfy your desires, you abused the trust of your victims. They were willing to do anything to join the Canadian Forces; you said so yourself in your testimony. You took advantage of a situation where the victims were vulnerable.
- (d) Ms. L-G, the fourth victim, was 17 years old at the time of the offence. The *Criminal Code* indicates that an offence that involved the abuse of a person under the age of 18 years constitutes an aggravating factor in determining the sentence. Having said that, I note that she wore a brassiere, panties and a gown throughout her medical exam and that her breasts were never uncovered. This is also the incident for which you were found guilty on the count of conduct to the prejudice of good order and discipline. Objectively, given the maximum sentence for this offence, this offence is less serious than breach of trust by a public officer. Moreover, subjectively, this offence is less serious than the four others since you did not look at the victim's uncovered breasts. Therefore, even though I consider this to be an aggravating factor, I do not give it as much weight for these reasons.

[10] The prosecutor presented the case of ex-Petty Officer 2nd Class Wilks and used that case to argue that the sentence in this case had to be compatible with the sentence in *Wilks*. He indicates that no other case involving a breach of trust by a public officer is based on similar facts and can assist the Court in sentencing. Defence counsel argues that *Wilks* must be distinguished from the present case because ex-Petty Officer 2nd Class Wilks was found guilty of one count of sexual assault and four counts of breach of trust by a public officer. Moreover, he submits that the facts in *Wilks* were more serious since ex-Petty Officer 2nd Class Wilks touched his victims' breasts.

[11] Ex-Petty Officer 2nd Class Wilks had examined the bare breasts of one of his victims with his hands on two occasions; he had examined the breasts of another victim with his hands while she was wearing a brassiere; and he had looked at the bare breasts

of his three victims. Moreover, he had stood behind one victim and had told her to bend down even though she was wearing nothing but a thong. The facts in *Wilks* are much more serious than the facts in the present case. Sergeant Boudreau did not touch his victims' breasts. He saw the bare breasts of four of his five victims. Even though these actions caused the victims harm, they do not seem to have had the same devastating effects as in *Wilks*. Ex-Petty Officer 2nd Class Wilks was found guilty of sexual assault: the maximum sentence for this offence is 10 years' imprisonment. Objectively, this case was much more serious than the one at bar.

[12] I agree with defence counsel. Even though the majority of offences are the same, Sergeant Boudreau's case can be distinguished from that of ex-Petty Officer 2nd Class Wilks. The facts in *Wilks* are much more serious in addition to the fact that ex-Petty Officer 2nd Class Wilks was found guilty of sexual assault.

[13] Considering the aggravating and mitigating factors and the need to denounce the offender's conduct and to dissuade members of the Canadian Forces from engaging in such unlawful conduct, I will impose a sentence that will send—both you and other members of the Canadian Forces—the message that such behaviour is unacceptable and has serious consequences.

[14] Considering the particular facts of this case, I find that the sentence I am about to pronounce adequately incorporates the sentencing principles, namely, denunciation and general deterrence, and that it is the lightest possible sentence to ensure the protection of the public and the maintenance of discipline.

[15] All the other medical technicians who testified during the trial, from the master corporal to the master warrant officer rank, clearly described the importance of respecting the privacy of individuals undergoing a medical examination. The procedures for ensuring this respect were well known to everyone, including you. These procedures were taught at your basic medical technician training and throughout your career. You consciously decided to ignore your training and precise directives to satisfy your personal needs. You did not behave like a senior non-commissioned officer or a competent, conscientious senior medical technician. You failed to demonstrate that you deserved these titles.

FOR THESE REASONS, THE COURT:

[16] **SENTENCES** Sergeant Boudreau to a demotion to the rank of corporal.

[17] The proceedings relating to the court martial of Corporal Boudreau are concluded.

Counsel:

Major P. Doucet and Major P. Rawal, Canadian Military Prosecution Service

Counsel for Her Majesty the Queen

Captain H. Bernatchez, Defence Counsel Services
Counsel for Sergeant J.J.C. Boudreau