



COURT MARTIAL

Citation: *R v Fortin*, 2012 CM 1001

Date: 20120228

Docket: 201202

Standing Court Martial

Asticou Centre
Gatineau, Québec, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant-Colonel J.G. Fortin, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant-Colonel Fortin has pleaded guilty to a charge of neglect to the prejudice of good order and discipline under s. 129 of the *National Defence Act* for a failure to handle a 9-millimetre pistol in a safe manner, as it was his duty to do so, resulting in the discharge of one live round. The offence took place at the Kabul International Airport, Afghanistan and the court must now determine a just and appropriate sentence in this case.

[2] Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that Lieutenant-Colonel Fortin be sentenced to a fine in the amount of 1500 dollars. Although, the court is not bound by this joint submission, it is generally accepted that a joint submission ought to be rejected only if it is contrary to the public interest and the sentence would bring the administration of justice into disrepute.

[3] In the context of sentencing an offender under the Code of Service Discipline, a court martial should guide itself with the appropriate sentencing purposes, principles and objectives, including those enunciated in ss. 718.1 and 718.2 of the *Criminal Code*. The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives: one, the protection of the public and it includes the interest of the Canadian Forces; two, the denunciation of the unlawful conduct; three, the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences; and finally, the reformation and rehabilitation of the offender.

[4] The sentence must also take into consideration the following principles. The sentence must be commensurate with the gravity of the offence, the previous character of the offender and his/her degree of responsibility; the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances and on that note, concerning the principle of proportionality, counsel have relied on the recent court martial decisions in *Scagnatti* and *Patterson* to support their joint recommendation. If I continue, a court must respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances. This principle is not relevant for this particular case. Finally, the sentence should or will be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. However, the court must act with restraint in determining sentence in imposing such punishment or punishments that should be the minimum necessary intervention to maintain discipline.

[5] The facts surrounding the commission of this offence reveal that on 1 September 2011, Lieutenant-Colonel Fortin was at the Kabul International Airport, Afghanistan. There, he received a duffle bag containing individual tactical equipment from a corporal. The bag contained among other things, a disassembled C7 rifle, a 9mm pistol, loaded magazines and a fragmentation vest. A loaded 9mm magazine had already been inserted in the 9mm pistol. The practice in theatre, at that time, was to insert a loaded magazine in the 9mm pistols in the duffle bags. This practice has since been abandoned further to the incident that led to the charge before this court. As the offender was inspecting and assembling the inventory of the bag with two privates, he grabbed the 9mm pistol. As he wanted to disassemble the pistol so he could verify that the main spring guide had been installed correctly; Lieutenant-Colonel Fortin first pulled the slide to the rear. He then suddenly decided to proceed with an unloading of the weapon. He let the slide go forward and pressed the trigger, causing the discharge of one live round from the 9mm pistol. Should he had followed the proper handling procedure, Lieutenant-Colonel Fortin would have removed the magazine and then pull the slide to the rear, look down through the opening of the slide and ascertain whether there was any live round in the magazine.

[6] As a result, a shot was fired on the ground immediately in front of Lieutenant-Colonel Fortin. No persons present were injured by the projectile. He immediately apologized to all present. The same day, he attended the local military police detach-

ment to provide a voluntary statement. The military police refused to take his statement as they had not reached that stage in their investigation of the incident. Lieutenant-Colonel Fortin informed by email his in-theatre chain of command as well as his commanding officer back in Norway of the incident. He accepted full responsibility for the incident. Lieutenant-Colonel Fortin offered to meet in person with the in-theatre commander and he apologized for the incident. The military police met with him on 4 September 2011 and he explained the details of the incident to the military police. Lieutenant-Colonel Fortin was qualified to handle the 9mm pistol and he had received refresher training on the pistol in November 2010. After proper inspection, the weapon was found to function normally.

[7] The aggravating factors in this case are the following:

- a. The objective seriousness of an offence under section 129 of the *Nation Defence Act* which is punishable to dismissal with disgrace from Her Majesty's service. Since the neglect relates to the discharge of a service weapon, it is fair to say that it is usually considered a serious offence. Fortunately, nobody was injured after the weapon discharge.
- b. Lieutenant-Colonel Fortin had received refresher training shortly before his deployment in Afghanistan. Should he had followed the proper procedure, the incident would have been avoided.

[8] The mitigating circumstances are the following:

- a. Lieutenant-Colonel Fortin has accepted full responsibility immediately after the incident and he has pleaded guilty before this court. There is no issue that he has accepted responsibility and also that he is remorseful for his actions.
- b. His record of service and the evidence filed before the court clearly demonstrate that Lieutenant-Colonel Fortin is and has been an outstanding officer in the Canadian Forces. Not only is he held in high esteem by his superiors, he is perceived as a role model by his subordinates. This incident may be serious but it must be put in its proper perspective. It remains an unfortunate oversight from someone who has always displayed rigour and remarkable professionalism throughout his military career.
- c. And finally, the offender has no previous disciplinary or criminal record.

[9] The court agrees with counsel that the proposed sentence is the minimal sentence in the circumstances and it is not so off the mark that its adoption by this court martial would be contrary to the public interest or bring the administration of military justice into disrepute. The proposed sentence is sufficient to meet the objectives sought, namely denunciation, general deterrence and rehabilitation. The court does not believe that specific deterrence represents a significant factor in this case.

FOR THESE REASONS, THE COURT:

[10] **FINDS** you guilty of the first charge under s. 129 of the *National Defence Act* for neglect to the prejudice of good order and discipline.

AND

[11] **SENTENCES** you to a fine in the amount of 1500 dollars.

Counsel:

Major J.E. Carrier, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander P.D. Desbiens, Directorate of Defence Counsel Services
Counsel for Lieutenant-Colonel Fortin