Citation: *R. v. Sergeant J.J.M.G. Bélanger*, 2008 CM 4014

Docket: 200817

STANDING COURT MARTIAL
CANADA
QUEBEC
ASTICOU CENTRE, GATINEAU

Date: 2 October 2008

PRESIDING: LIEUTENANT-COLONEL J-G. PERRON, MILITARY JUDGE

HER MAJESTY THE QUEEN
v.
SERGEANT J.J. M.G. BÉLANGER
(Offender)

SENTENCE
(Rendered Orally)

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[1] Sergeant Bélanger, having accepted and recorded your plea of guilty to charge number four, the court now finds you guilty of this charge. You have pled guilty to a charge of neglect to the prejudice of good order and discipline laid under section 129 of the *National Defence Act*.

[2] The statement of circumstances to which you formally admitted the facts as conclusive evidence of your guilt provides this court with the circumstances surrounding the commission of this offence. On 28 February 2007, while deployed in Kandahar, Afghanistan, you severely injured Corporal Blain by dislocating his jaw while demonstrating a use of force technique to members of the military police section. You were a qualified use of force instructor having obtained this qualification after a six-week course in 2004. This incident occurred during the unauthorized portion of a training session on the use of flexi cuffs and the handling of detainees. You were responsible for this training.

[3] The principles of sentencing which are common to both courts martial and civilian criminal trials in Canada have been expressed in various ways. Generally, they are founded on the need to protect the public, and the public, of course, includes the Canadian Forces.

[4] The primary principles are the principles of deterrence, that includes specific deterrence in the sense of deterrent effect on you personally, as well as general

deterrence; that is, deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct, and, last but not least, the principle of reformation and rehabilitation of the offender.

[5] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[6] The court has also considered the guidance set out in section 718 to 718.2 of the *Criminal Code of Canada*. Section 718 sets out the fundamental purpose of sentencing as a means of contributing to ensure respect for the law and the maintenance of a just and peaceful society by the imposition of just sanctions that have one or more of the following objectives: The denunciation of unlawful conduct; deterring the offender and other persons from committing offences; separating the offender from society where necessary; assisting in rehabilitating offenders, providing reparations for harm done to victims or to the community; and the promotion of a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[7] The court is also required, in imposing a sentence, to follow the directions set out in article 112.48 of Queen's Regulations and Orders which obliges it, in determining a sentence, to take into account any indirect consequence of the finding or of the sentence and impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

[8] Usually the court must also give consideration to the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different. I have not been able to accomplish this exercise in comparison in the present case since I was not provided with case law that pertains to offences or fact situations that are similar to the present one.

[9] Although I have considered the principles and purposes set out in section 718 to 718.2 of the *Criminal Code of Canada*, I am mindful that the ultimate aim of sentencing in the court martial process is the restoration of discipline in the offender and in military society. The court must impose a sentence that should be the minimum necessary sentence to maintain discipline.

[10] The prosecution has suggested that a sentence of a severe reprimand and a fine in the amount of $2,000 would be the minimum sentence to maintain discipline. Your defence counsel has proposed a sentence of a reprimand and a fine in the amount of $1,000. Their respective recommendations on sentencing are not that far apart.

[11] I will now deal with the evidence in mitigation of sentence.

You do not have a conduct sheet therefore you are a first-time offender.

> You indicated, through your counsel, in January 2008 that you wished to plead guilty at your trial. Canadian jurisprudence provides that an early plea of guilty is a tangible sign that the offender feels remorse for his or her actions and that he or she takes responsibility for the illegal actions and the harm done as a consequence of these actions. Therefore, such conduct, an early guilty plea, will usually be considered as a mitigating factor.
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> You have served in Canada and in Haiti, Bosnia-Herzegovina, and Afghanistan, and you've been in the Canadian Forces for 28 years. It would appear that you had an unblemished record until today.

[12] The only evidence presented in mitigation were your last three personnel evaluation reports. I have carefully reviewed those three reports that form Exhibits 8, 9, and 10. Although I would not necessarily describe your last two personnel evaluation reports as outstanding, they do describe the qualities and the traits of character that we wish to see in a non-commissioned officer. They are positive and demonstrate a consistent improvement in your performance and the potential to be promoted to the rank of warrant officer.

[13] I will now address the aggravating factors of this case. I do not agree with your counsel that the "thin-skull doctrine" applies in sentencing. Canadian jurisprudence accepts that the consequences of the offence on the victim may be one of the factors that a sentencing judge may consider when determining a just sentence. The weight given to that factor depends on the facts of the case. In the present case, the consequences of your negligence are quite severe. They have affected Corporal Blain in every aspect of his life. His future career in the military police branch, and possibly even in the Canadian Forces, is in doubt. His injury has caused him a considerable amount of pain since the offence. He must still follow an extensive rehabilitation program as well as complicated surgical procedures. His personal and matrimonial life have been negatively affected by your negligence.

[14] The court knows that you did not intentionally injure Corporal Blain; there is no evidence to that effect. You are guilty of negligence. But your negligence was not trivial; it was a marked departure of the conduct we expect of a person in your position at the time of the offence. You were a trained instructor in the use of force. By your training, you knew the consequences of such use of force and you also knew the consequences of its misuse or abuse. You are a member of the military police. As such, you are fully aware of the responsibility that comes with the use of force. As a peace officer, as a member of the military police, you are given powers that members of society do not have, you may use force in the execution of your duties. With such powers come added responsibilities. Although there was no evidence on that specific point, it is common knowledge that all police officers receive training in the use of force required in the execution of your duty. The use of force technique demonstration that you were performing was to provide your subordinates with training on the appropriate level of force to be used in the execution of their duties.

[15] The facts of this case indicate that the specific use of force technique that you demonstrated was incorrect in the amount of force used and the length of time that that force was used, and thus the consequences on Corporal Blain. I find that the combination of your training as a peace officer, your training as an instructor in the use of force, and your experience as a member of the military police, that being 28 years, 27 years at the time of the offence, this combination increases the subjective gravity of your negligence. Your training in the use of force could help you foresee the possible consequences of an excess and a misuse of that force.

[16] I also find that an element of trust was breached in this situation. Every member of your section, including Corporal Blain, could expect that you, as a sergeant, their superior and a qualified instructor in the use of force, would take the necessary measures to ensure that you would train them properly in the execution of their duties while ensuring their well-being. This excessive use of force during that demonstration not only seriously injured Corporal Blain, it also was an example of the use of force that cannot be demonstrated as an accepted means to subdue a person.

[17] Sergeant Bélanger, you committed a serious error based on what appears to be a momentary lack of judgement. You have admitted your negligence. I hope you have learned from this.

[18] The court finds that the prosecution's position on sentencing is at the lenient end of the sentencing spectrum. The prosecutor has explained the reason for her recommendation on sentence.

[20] Having reviewed the totality of the evidence, and the representations made by the prosecutor and your defence counsel, I have come to the conclusion that the sentence I am about to pronounce is the least minimum necessary sentence to maintain discipline and will be commensurate with the gravity of the offence and the previous character of the offender.

[21] Sergeant Bélanger, I sentence you to a severe reprimand and a fine in the amount of $2,000. This fine of $2,000 is to be paid within 90 days of today's date.

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

COUNSEL:

Major M. Trudel, Directorate of Military Prosecutions 4
Counsel for Her Majesty, The Queen

Lieutenant-Commander J. McMunagle, Directorate of Defence Counsel Services
Counsel for Sergeant J.J.M.G. Bélanger