

**Citation:** *R. v. Sergeant L. Morin*, 2008 CM 4017

**Docket:** 200841

**STANDING COURT MARTIAL  
CANADA  
ALBERTA  
CANADIAN FORCES BASE WAINWRIGHT**

---

**Date:** 19 November 2008

---

**PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.**

---

**HER MAJESTY THE QUEEN**

**v.**

**SERGEANT L. MORIN  
(Accused)**

---

**FINDING**

**(Rendered orally)**

---

## **OFFICIAL ENGLISH TRANSLATION**

### ***Introduction***

[1] The accused, Sergeant Morin, stands accused of one charge laid under section 97 of the *National Defence Act*. More specifically, he is accused of having been drunk around 27 May 2007 at Mewata Armoury, city of Calgary, province of Alberta.

[2] The evidence before this Court consists of the judicial notice taken by the Court of the facts and issues under Rule 15 of the *Military Rules of Evidence* and the testimonies of Warrant Officer MacDonald, Privates St-Laurent and Goldsmith and Mr. Langford for the prosecution, those of Privates Callaghan and Duffy for the defence, and an exhibit filed by the prosecution

### ***Presumption of innocence and reasonable doubt***

[3] Before this Court provides its legal analysis of the charge, it is appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt, a standard that is inextricably intertwined with principles fundamental to any criminal trial. While these principles are certainly well known to counsel, other people in this courtroom may not be so familiar with them.

[4] It is fair to say that the presumption of innocence is the most fundamental principle in our criminal law, and the principle of proof beyond a reasonable doubt is an essential part of the presumption of innocence. In matters dealt with under the *Code of Service Discipline*, as in cases dealt with under Canadian criminal law, every person charged with an offence is presumed to be innocent until the prosecution proves his or her guilt beyond a reasonable doubt. An accused person does not have to prove that he or she is innocent. It is up to the prosecution to prove its case on each element of the offence beyond a reasonable doubt. An accused person is presumed innocent throughout his or her trial until a verdict is given by the finder of fact.

[5] The standard of proof beyond a reasonable doubt does not apply to the individual items of evidence or separate pieces of evidence that make up the prosecution's case, but to the total body of evidence upon which the prosecution relies to prove the accused's guilt. The burden or onus of proving the guilt of an accused beyond a reasonable doubt rests upon the prosecution, and it never shifts to the accused person. A court must find an accused person not guilty if it has a reasonable doubt about his or her guilt after having considered all of the evidence. The term "beyond a reasonable doubt" has been used for a very long time. Its is part of our history and traditions of justice. The Supreme Court of Canada has proposed a model charge to provide the necessary instructions as to reasonable doubt. The principles laid out in *Lifchus* have been applied in a number of Supreme Court and appellate court decisions. In substance, a reasonable doubt is not a far-fetched or frivolous doubt. It is not a doubt based on sympathy or prejudice. It is a doubt based on reason and common sense. It is a doubt that arises at the end of the case based not only on what the evidence tells the court, but also on what that evidence does not tell the court. The fact that a person has been charged is in no way indicative of his or her guilt.

[6] In another case, *Starr*, the Supreme Court of Canada ruled that,

. . . an effective way to define the reasonable doubt standard for a jury is to explain that it falls much closer to absolute certainty than to proof on a balance of probabilities. . . .

[7] However, it should be remembered that it is nearly impossible to prove anything with absolute certainty. The prosecution is not required to do so. Absolute certainty is a standard of proof that does not exist in law. The prosecution only has the burden of proving the guilt of an accused person beyond a reasonable doubt.

[8] To put it in perspective, if the Court is satisfied or would have been satisfied that the accused is probably or likely guilty, then the accused would have to be acquitted, since proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt. What is evidence? Evidence may include testimony under oath or a solemn affirmation before the Court by witnesses about what they observed or what

they did. It could be documents, photographs, maps, other items introduced by witnesses, the testimony of expert witnesses, formal admissions of facts by either the prosecution or the defence, and matters of which the Court takes judicial notice. It is not unusual that the evidence presented to the Court may be contradictory. Often witnesses may have different recollections of events. The Court has to determine what evidence it finds credible. Credibility is not synonymous with telling the truth, and a lack of credibility is not synonymous with lying. Many factors influence the Court's assessment of the credibility of the testimony of a witness. For example, the Court will assess a witness's opportunity to observe or a witness's reasons to remember. The Court will consider, for instance, whether there was something specific that helped the witness remember the details or event that he or she described: were the events noteworthy, unusual and striking, or relatively unimportant and therefore, understandably, more difficult to recollect? Does a witness have an interest in the outcome of the trial? That is, does he or she have a reason to favour the prosecution or the defence? Is he or she impartial? This last factor applies in a somewhat different way to the accused. Even though it is reasonable to assume that the accused is interested in securing his or her acquittal, the presumption of innocence does not permit a conclusion that an accused will lie where the accused chooses to testify.

[9] Another factor in determining credibility is the apparent capacity of the witness to remember. The demeanour of the witness while testifying is a factor that can be used in assessing credibility, that is, was the witness responsive to questions, straightforward in his or her answers, or evasive, hesitant, or argumentative? Finally, was the witness's testimony consistent with itself and with the uncontradicted facts? Minor discrepancies in a testimony, which can and often do inadvertently occur, do not necessarily mean that the testimony should be disregarded. However, a deliberate falsehood is an entirely different matter. It is always serious and may well taint the witness's entire testimony. The Court is not required to accept the testimony of any witness except to the extent that it has impressed the Court as credible. However, the Court will accept evidence as trustworthy unless there is a reason to disbelieve it. In *R v. W.(D.)*, the Supreme Court of Canada instructs trial judges on the procedure and tests to follow at trial. As established in that decision, the test goes as follows:

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused, but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[10] The essential elements of this offence are the following:

The offender's identity;

The date and location of the incident;

The fact that the accused was under the influence of alcohol or a drug;

The fact that the accused was unfit to perform any duty that he was required to perform, and behaved in a disorderly manner or in a manner likely to bring discredit on Her Majesty's service; and

The accused's blameworthy state of mind.

### *Evidence*

[11] An infantry recruitment course, the BIQ, was held at the Wainwright Training Centre from March to June 2007. Except for Mr. Langford, all of the witnesses were either students or instructors for this course. Approximately 40 recruits and 3 instructors arrived in Calgary on 27 May 2007. Sergeant Morin was the non-commissioned officer on duty that evening. The unanimity of the witnesses regarding the facts ends at this moment.

[12] The identity, date and place as identified in the charge are established from the evidence of the prosecution and defence witnesses. The accused did not dispute these points.

[13] The prosecution alleges that Sergeant Morin was under the influence of alcohol upon his return to the military armoury and that he was unfit for duty as duty non-commissioned officer. Counsel for the defence responds that the prosecution has presented no evidence proving beyond a reasonable doubt that Sergeant Morin had been under the influence of alcohol and therefore unfit for duty.

[14] The prosecution filed no evidence showing that Sergeant Morin had consumed alcoholic beverages. The evidence for the prosecution is limited to the effects of the consumption of alcoholic beverages on Sergeant Morin. I will now examine that evidence.

[15] Warrant Officer MacDonald testified that Sergeant Morin was the only duty non-commissioned officer for the evening of 27 May 2007. He also testified that he had invited Sergeant Morin to join him on the evening of 27 May and that Sergeant Morin was permitted to consume alcohol, but not to the point of being intoxicated and therefore unfit for duty. Warrant Officer MacDonald went out that evening and returned

to the armoury around 2200 or 2300 hours, then left again and did not return until the next morning. His testimony gives the Court no information on Sergeant Morin's state of inebriation that evening, nor on Sergeant Morin's fitness for duty.

[16] Private St-Laurent testified next. He had consumed three or four alcoholic drinks at dinner and said he was sober upon returning to the armoury around 2300 hours. He described a most chaotic scene with the words, "mass confusion, Gong Show", since most of the recruits were drunk and many were taking the opportunity to let off steam. He did not speak to Sergeant Morin and stayed some distance away from him, since Sergeant Morin was trying to control the recruits who were the most drunk. Private St-Laurent tried to control the recruits who were a little less drunk. Although he stated in his examination-in-chief that Sergeant Morin seemed drunk since he was "stumbling", had "slurred speech" and was "looking pass [*sic*] people he was speaking to", Private St-Laurent also stated on cross-examination that it was indeed possible that he did not exactly recall the "slurred speech" and lack of focus. It also appears that he did not state these observations in the statement he had filled out the next week, despite the fact that these important events were fresh in his mind at the time.

[17] Private Goldsmith testified that he had had three or four alcoholic beverages at each establishment he had gone to that evening and that, according to him, he was "moderately drunk" upon his return to the armoury. He, too, described a scene of anarchy at the armoury. He testified that there had been fights in the armoury, that he had been the course senior on that day and had tried to control the situation. He described Sergeant Morin as drunk, since he was shouting a lot, was red-faced, had erratic behaviour and slurred speech, and was "swearing" a lot. Private Goldsmith had gone to speak with the commissionaire for advice. On cross-examination, he admitted to being very drunk when the events occurred. He testified that Sergeant Morin was in the habit of swearing and that his face had been red on the evening of 27 May just as it was at certain times during the trial.

[18] Mr. Langford was the only commissionaire on duty at Metawa Armoury throughout the evening of 27 May 2007. His table was set up near the armoury entrance, some 30 feet from the recruits' cots on the parade ground at the centre of the armoury. He was in a position to observe that area at all times. He testified that the course senior had tried to control the recruits who were drunk. He also testified that the course senior had spoken with him and was overwhelmed because he could not control his group. He had also spoken with the sergeant responsible for the group and asked him what was going on. He described Sergeant Morin as drunk, since he had been slurring his words, "staggering", shouting and had alcohol on his breath. He testified that Sergeant Morin's voice had not been normal and that he had been speaking more loudly than is normal. He believed that other non-commissioned officers had been at the armoury before his departure at 0200 hours the next morning, but was not certain of that due to the time that had elapsed since the event. He had written a report on these incidents. He had been

stunned that a recruit who was the course senior had needed to come and see him for advice on controlling the situation.

[19] On cross-examination, Mr. Langford testified that the situation had deteriorated when the sergeant became involved. He does not recall having seen any fights between the soldiers except for those that occurred when the recruits were in three ranks behind the armoury. He had never met Sergeant Morin before that night and did not know his normal behaviour patterns. Although he is certain that the course senior was the person who did everything to keep control of the group, and that he had spoken to him, he was also convinced that the group senior had never left the armoury and that he had remained ready near his office, since the group senior was on the fire picket. While he did not describe the signs of intoxication in his report, he was certain that he had stated that Sergeant Morin was drunk. He had spoken with Sergeant Morin and stated that the latter had been able to speak to him without difficulty insofar as he agreed with the question as to whether “he was able to carry a conversation with you”.

[20] Private Callaghan was on fire picket and did not leave the armoury that evening. He was sober. He testified that several fights had taken place between 2230 and 2330 hours when the drunk recruits had returned to the armoury. The course senior had tried to control the group by shouting and did not want to take advice from members of the fire picket, who were sober. He described the two instances of “scuffling” that had taken place when Sergeant Morin had put the group into three ranks. He testified that ultimately, Sergeant Morin had controlled the situation well, since no one had been injured. Private Callaghan was not cross-examined by the prosecution.

[21] Private Duffy had gone out on the evening of 27 May and was sober upon his return to the armoury. He arrived back around curfew. Most of the recruits had already returned, and he described the situation as chaotic, or, in his words, a “mad house”, since most of the recruits were drunk. There was “pushing and shoving”, and he testified that Sergeant Morin was doing his best to control the situation. He testified that during a—he testified that during the formation into ranks outside, Sergeant Morin told some of the most aggressive-seeming recruits that they could fight if they wanted to. Private Duffy was not cross-examined by the prosecution.

[22] I will now apply the test stated in *R. v. W.(D.)*, quoted above. Sergeant Morin did not testify, so I have no need to examine the first two parts.

[23] I must therefore ask myself whether, on the basis of the evidence that I accept, I am convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[24] The evidence filed by the defence does not in any way address the accused's state of inebriation; only the prosecution presented evidence to that effect. I will now examine that evidence.

[25] The Court does not consider Privates St-Laurent and Goldsmith to be credible witnesses. Private Goldsmith was clearly drunk when these events occurred. The Court cannot place much confidence in his ability to correctly recall Sergeant Morin's behaviour and state of inebriation. Private St-Laurent admitted that it was quite possible that he did not exactly recall Sergeant Morin's slurred speech or lack of focus.

[26] Mr. Langford is another witness who lacks credibility owing to the lack of reliability in his testimony. Although he is convinced that the course senior was the one who had decidedly best controlled the group, and that the course senior had asked him for advice, he is also convinced that the course senior had spent the evening near his office. It is clear from Private Goldsmith's testimony that he was the course senior and that he had not remained near Mr. Langford. Mr. Langford does not recall there being any "pushing or shoving" before Sergeant Morin assembled the recruits in three ranks behind the armoury, while the other witnesses state that a number of fights took place between 2230 and 2330 hours. He does not seem to agree with the methods that Sergeant Morin used to attempt to control the group. The Court cannot place much confidence in Mr. Langford's opinion on Sergeant Morin's state of inebriation, given the indications that Mr. Langford used. He did not know Sergeant Morin and could not say that Sergeant Morin was speaking, was not speaking in a normal voice, that he was slurring his words or that he was shouting more than he does normally. The smell of alcohol on the breath does not, in itself, mean that a person is under the influence of alcohol. The fact that Mr. Langford stated without reservation that the course senior had remained at his side throughout that evening greatly undermines his ability to remember the events of 27 May 2007 clearly and therefore the reliability—negatively effects the reliability of his testimony.

[27] Privates Callaghan and Duffy are credible witnesses. They testified that Sergeant Morin was doing his best to control a most difficult situation. Although it appears from the testimonies of Privates Duffy and St-Laurent that Sergeant Morin encouraged some fighting, the totality of the evidence reveals that the situation was chaotic, since most of the recruits were drunk and out of control, and that Sergeant Morin was trying to control the situation.

[28] Sergeant Morin, please stand up. Taking into account my assessment of the prosecution's evidence regarding Sergeant Morin's state of inebriation, my conclusion is that the evidence presented by the prosecution has not proven, beyond all reasonable doubt, that Sergeant Morin was under the influence of alcohol during the events of 27 May 2007 and unfit to perform his duties. Although the evidence shows that you had probably consumed alcohol and that your behaviour on that evening left

something to be desired, especially when you encouraged recruits to fight, the evidence of the prosecution has not reached the threshold of reasonable doubt.

[29] Sergeant Morin, for the reasons stated by the Court, I find you not guilty of this charge.

LIEUTENANT-COLONEL J-G PERRON, M.J.

Counsel:

Lieutenant-Commander S. Léonard, Regional Military Prosecutions, Western Area  
Counsel for Her Majesty the Queen  
Major A. Litowski, Directorate of Defence Counsel Services  
Counsel for Sergeant L. Morin