

Citation: *R. v. Ennis*, 2005CM3025

Docket: S200547

**STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
CANADIAN FORCES BASE HALIFAX**

Date: 4 November 2005

PRESIDING: COMMANDER P.J. LAMONT, M.J.

**HER MAJESTY THE QUEEN
v.
ex-ORDINARY SEAMAN S.D. ENNIS
(Accused)**

**FINDING
(Rendered orally)**

[1] This court finds you guilty of charge number one, charge number two, and charge number three.

[2] Ex-Ordinary Seaman Ennis is charged with three offences under section 130 of the *National Defence Act*; that is to say, three charges of trafficking in a controlled substance contrary to subsection 5 (1) of the *Controlled Drugs and Substances Act*.

[3] The prosecution at court martial, as in any criminal prosecution in a Canadian court, assumes the burden to prove the guilt of the accused beyond a reasonable doubt. In a legal context, this is a term of art with an excepted meaning. If the evidence fails to establish the guilt of the accused beyond a reasonable doubt the accused must be found not guilty of the offence. That burden of proof rests upon the prosecution and it never shifts, there is no burden upon the accused to establish his or her innocence. Indeed the accused is presumed to be innocent at all stages of a prosecution unless and until the prosecution establishes, by evidence that the court accepts, the guilt of the accused beyond a reasonable doubt.

[4] Reasonable doubt does not mean absolute certainty, but it is not sufficient if the evidence leads only to a finding of probable guilt. If the court is only satisfied that the accused is more likely guilty than not guilty that is insufficient to find

guilt beyond a reasonable doubt and the accused must, therefore, be found not guilty. Indeed the standard of beyond a reasonable doubt is much closer to absolute certainty than it is to a standard of probable guilt. But reasonable doubt is not a frivolous or imaginary doubt, it is not something based on sympathy or prejudice, it is a doubt based on reason and common sense that arises from the evidence or the lack of evidence. The burden of proof beyond a reasonable doubt applies to each of the elements of the offence charged; in other words, if the evidence fails to establish each element of the offence charged beyond a reasonable doubt the accused is to be found not guilty.

[5] The elements of the offence of trafficking in a controlled substance were referred to by counsel in the course of submissions. There is no issue as to the identity of the accused or the dates and places of the offences as particularized in the three charges. Trafficking is defined in section 2 of the *Controlled Drugs and Substances Act*. So far as it applies to the evidence I have heard "Traffic" means:

(a) to sell, administer, give, transfer, transport, send or deliver the substance,

... or

(c) to offer to do [so] ...

[6] As well the evidence must establish that the substances are in fact the controlled substances particularized in the charges. In addition the evidence must establish that the accused knew the nature of the substances and intended to do the actions that amount to trafficking as I have defined it.

[7] The evidence in this case clearly establishes that on 18 November 2004 the accused gave Master Corporal McComb, then acting in an undercover capacity, seven small bags of cocaine in exchange for a purchase price of \$240 in cash. Then on 22 November 2004 the accused gave Master Corporal McComb 14 small bags of cocaine and one small bag containing four tablets of methylenedioxymphetamine, known apparently as ecstasy, in exchange for a total purchase price of \$560 in cash, which included a fee for the accused of \$40.

[8] Defence counsel submits that the methods employed by the police in handling the drug exhibits in this case were sloppy. It is argued that the Evidence Continuity Forms, of which Exhibit 21 is an example, were not properly completed and important information was left out in completing the form. In my view there is no validity to the complaints of improper record keeping by the police in this case.

[9] The evidence clearly establishes that the drugs given to Master Corporal McComb by the accused were securely maintained, samples were sent for analysis, and duly returned with certificates as to the illegal nature of the substances, and properly

brought before the court. I am satisfied that the drugs obtained by Master Corporal McComb are the items before the court as exhibits and that the items were properly analysed and dealt with by the police.

[10] Counsel submits that the accused is not guilty of these offences because he acted only as an agent of the purchaser; that is, Master Corporal McComb acting in an undercover capacity. The law provides that a person who merely assists another to obtain illegal drugs may be guilty of assisting that person in the offence of possession of the drugs, but is not guilty of the offence of trafficking. However, in the present case the actions of the accused went well beyond merely assisting the undercover officer to obtain illegal drugs. The accused located a source of the drugs, arranged for the attendance of the supplier at the location where the transactions took place, negotiated the prices in the absence of the undercover officer, and obtained some benefit for himself either in cash or in drugs for his own use. In so doing he actively assisted the unknown person who supplied the drugs to traffic by selling.

[11] Section 72 subsection (1) of the *National Defence Act* reads in part:

- (1) Every person is a party to and guilty of an offence who
 - (a) actually commits it;
 - (b) does or omits to do anything for the purpose of aiding any person to commit it ...

Importantly in this case, the accused physically handed the drugs to the undercover officer while both were inside the undercover officer's vehicle. The accused's acts of giving the drugs on both occasions directly to the officer makes him liable as a principle in the commission of these offences.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major J.J. Samson, Regional Military Prosecutor Atlantic
Counsel for Her Majesty the Queen
Major S.D. Richards, Regional Military Prosecutor Atlantic
Co-Counsel for Her Majesty the Queen
Lieutenant-Colonel D.T. Sweet, Directorate of Defence Counsel Services
Counsel for ex-Ordinary Seaman S.D. Ennis