



COURT MARTIAL

Citation: *R v. Bérubé*, 2012 CM 1011

Date: 20120924

Docket: 201214

Standing Court Martial

Valcartier Garrison
Quebec City, Quebec Canada

Between:

Her Majesty the Queen

- and -

Corporal J. Bérubé, Offender

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Orally)

[1] Corporal Bérubé has admitted his guilt on the charge of stealing under section 114 of the *National Defence Act*. The Court accepted and recorded this admission of guilt and ordered a stay of proceedings with regard to the alternative charge of receiving, which had been laid under section 115 of the Act.

[2] Counsel in attendance made a joint submission, namely, a reprimand with a \$500 fine payable in two equal instalments. This recommendation is at the lower end for similar offences committed in relatively similar circumstances.

[3] The facts of this case are simple. In short, in late September 2010, two members notified Master Corporal Raymond, member of the 1st, Royal 22e Régiment, of an unusual situation, namely, that a personal vehicle was parked in the lot of Building 314 on Canadian Forces Base Valcartier and that someone had jacked up this vehicle and removed its wheels. After making inquiries to identify the owner, Master

Corporal Raymond contacted Private Déry-Doiron, who was on exercise at the time at Canadian Forces Base Wainwright, in Alberta. When notified that his vehicle was in the parking lot on four jacks, without wheel rims or tires, Private Déry told him that he could not explain the situation and asked him to contact the Military Police to report the incident. Master Corporal Raymond then contacted the Military Police at Valcartier Garrison to report the theft of the four wheel rims and tires of a private vehicle that was located near Building 314. A few days later, Private Déry-Doiron's brother came and installed winter tires on his brother's vehicle and met with the Military Police to pick up the vehicle's keys and give them the jacks holding up the vehicle. Acting on information provided by the victim's brother, the Military Police checked out an automobile discussion forum on the Internet where wheel rims of the same model as the ones that had been stolen were being advertised. The Military Police's investigations allowed them to identify the accused as the person who posted these advertisements and to establish that the wheel rims for sale on the site were the same model as the ones that belonged to the victim. In mid-October, the investigators questioned Corporal Bérubé on suspicion of having perpetrated the theft. At this interview, he initially denied the facts. When confronted with the investigation findings, he quickly admitted that the wheel rims and tires in question were the ones that had been taken from the victim's vehicle and that he was the perpetrator of this theft. He also explained that he had acted on the spur of the moment because of financial problems that were overwhelming him at the time, and he agreed to make a written statement to that effect. On the same day as the interview with the Military Police officers, the property was returned to the Valcartier Garrison Military Police. This sums up the facts surrounding this case.

[4] Clearly, when imposing an appropriate sentence on an accused for the wrongful acts that he or she has committed in relation to the offences of which he or she is guilty, certain objectives must be aimed for in light of the principles applicable to sentencing, which vary slightly from one case to the next. We must bear in mind that the fundamental purpose of sentencing in a court martial is to not only build respect for the law, but also maintain military discipline by imposing sanctions that are fair yet still the minimum sanctions necessary to attain these fundamental objectives.

[5] Without listing the objectives and all the applicable sentencing principles, of which counsel are well aware, I agree with the statements or the description that counsel in attendance gave to me, such that in this case, the fundamental objective is general deterrence and, as a complement, the objective of rehabilitating the accused, or at least of not hindering his rehabilitation.

[6] When we look at the aggravating factors in this case, they are serious but rather few. First, clearly, there is the objective seriousness of the offence of stealing, which is punishable by imprisonment for a term not exceeding seven years; it is therefore objectively in itself, as I said, an offence that Parliament has deemed to be serious. Second, I will also accept as an aggravating factor the fact that the theft was committed against someone who himself is also a member of the Canadian Forces and that the accused, I think, knew or should have known from the fact that the vehicle was stored or parked on a defence establishment, namely, Building 314, that this vehicle belonged

to a member. The courts martial have always recognized that stealing between members must be considered as being extremely serious because, as counsel for Her Majesty noted, it undermines the necessary relationship of trust between members, particularly where they are deployed on long missions or simply on exercises, which may also be for long periods. I agree with counsel for Her Majesty that the facts themselves must be regarded as an aggravating factor in the circumstances as regards the degree of planning and premeditation that was associated with stealing the tires and wheel rims, even though, from Corporal Bérubé's perspective, the actions were taken on the spur of the moment, because of financial difficulties. These, then, are the aggravating factors in this case.

[7] However, the mitigating factors are just as significant. There is, of course, the quick confession, when confronted with the evidence, that Corporal Bérubé made to the investigators, as well as his participation in recovering the property and the fact that, through his counsel, he notified counsel for Her Majesty that he intended to admit his guilt at the first opportunity. Therefore, there is no doubt in the mind of this Court that this admission of guilt today is a sign of remorse and a sincere acceptance of his responsibility in this case. I also note that two years have elapsed since the events in question. No one has explained to me why it took two years to bring this matter to trial, but this, too, is a significant factor in accepting this joint submission. Finally, there is the fact that Corporal Bérubé does not have a criminal record or a conduct sheet. Therefore, up to today, he had a completely clean record, and it is unfortunate that he tarnished it in this way because he was unable to find the right way to manage his financial situation. Clearly, this explains the act but does not excuse it, and he is fully aware of that. Another factor that must be taken into account in terms of mitigating the sentence concerns the relatively young age of the accused. He is 24 years old today and was 22 when he committed the offence. Therefore, at 22, I think that the lack of maturity and a serious error in judgment, in retrospect, mean that he will pay a rather heavy price, because from now on, as Lieutenant-Commander Desbiens, his counsel, noted, he will have a criminal record, and this is no small matter, as his counsel has already explained to him. Finally, I accept as a mitigating factor the family and financial situation of the accused. This financial situation, according to the documents filed in this Court, appears to be rather precarious. I therefore accept this joint submission while bearing in mind the financial situation, as well as the fact that you, Corporal Bérubé, are the father of a four-year-old child. This, too, the family situation, the financial situation, is a mitigating factor in the circumstances.

[8] Therefore, for all these reasons, the Court has no trouble endorsing counsel's joint submission, which was particularly well substantiated by both parties. The reasons given in this regard were persuasive and extremely well prepared, and you are to be congratulated in this regard.

FOR THESE REASONS, THE COURT

[9] **FINDS** the accused guilty of the first count, namely, the count of stealing, contrary to section 114 of the *National Defence Act*, and upholds the stay of proceedings with regard to the second count; and

[10] **SENTENCES** the accused, Corporal Bérubé, to a reprimand and a fine of \$500 payable in two equal monthly instalments of \$250, effective October 15, 2012.

Counsel:

Major G. Roy, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander P. Desbiens, Directorate of Defence Counsel Services
Counsel for Corporal J. Bérubé