



COURT MARTIAL

Citation: *R v Benedetti*, 2013 CM 2008

Date: 20130403

Docket: 201224

Standing Court Martial

Canadian Forces Base Gagetown
Oromocto, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Corporal K.C. Benedetti, Accused

Before: Commander P.J. Lamont, M.J.

REASONS FOR FINDING

(Orally)

[1] Corporal Benedetti is charged in a charge sheet with three charges. The first charge to which he has pleaded not guilty alleges an offence under section 130 of the *National Defence Act*; that is to say, the unauthorized possession of a prohibited weapon contrary to section 91(2) of the *Criminal Code*.

[2] 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 accepted 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.

[3] 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 proof 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 upon sympathy or prejudice. It is a doubt based upon reason and common sense that arises from the evidence or the lack of evidence.

[4] 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] In this case, the particulars of charge No. 1 allege that Corporal Benedetti on or about 23 November 2011, at or near Canadian Forces Base Gagetown, New Brunswick, did have in his possession a prohibited weapon, to wit a butterfly style knife without being the holder of a license under which he may possess it.

[6] In the course of argument, defence counsel advised the court on behalf of Corporal Benedetti that all the elements of the offence alleged in the first charge are admitted, except the issue of whether the item seized from Corporal Benedetti's possession is a prohibited weapon. Section 84(1) of the *Criminal Code* defines a prohibited weapon. According the *Code*, the term, "prohibited weapon" means:

(a) a knife that has a blade that opens automatically by gravity or centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife ...

And I omit the irrelevant part.

[7] The prosecution in this case says that the item introduced into evidence before me as Exhibit 3 is a prohibited weapon because it has a knife that has a blade that opens automatically by gravity or centrifugal force.

[8] In the New Brunswick case of *R v Richard and Walker* decided in 1981, reported at 63 CCC (2d) 333, Mr Justice Limerick, on behalf of the Court of Appeal, dealt with a case with some similarities to the present case. In that case, the item was referred to as a "buck knife," but it appears from the description of the item in that case that the question of whether or not the buck knife in that case was a prohibited weapon turned largely on the meaning to be ascribed to the definition of a prohibited weapon in the *Criminal Code*. At paragraph 8, Justice Limerick wrote:

The words "prohibited weapon" are given a specific meaning in the Criminal Code under s. 82(1)(b), and any knife that is included in the definition of a prohibited weapon as set out in s. 82(1)(b) is "prohibited weapon" whether or not, as a knife it comes within the ordinary meaning of a "weapon". Similarly a knife may be a "prohibited weapon" even though it was not designed to be used as such if in fact its blade, through wear or alteration, can be fully opened for use by applying centrifugal force or gravity to the blade or by applying pressure to a button spring or device in or attached to the handle. In other words, it is the capability and not the design of the knife which determine whether or not it is a "prohibited weapon". The design or intended use of the knife has no part in the determination of whether the knife is or is not a "prohibited weapon". It is the capability of the knife to be used as a weapon which is material.

[9] In large part, I agree with the observations of Mr Justice Limerick in that case. The question of whether or not Exhibit 3 before me was designed to fall within the definition of a prohibited weapon is not a useful question to be asked or answered. I am concerned about the capability of this item that is in evidence before me.

[10] I have examined the item for some time. There is no doubt that the item is a knife. The blade of the knife appears to be concealed within the handle of the knife. The handle itself is divided into two parts lengthwise. When the two parts of the handle of the knife are separated, the blade is exposed. At the end of the handle is what was referred to by counsel as a latch or perhaps a clasp that appears to keep the two sides of the handle of the knife together. It is only when the clasp is unclasped that the two sides of the handle can be separated in order to expose the blade of the knife.

[11] In the closed position, with the latch or clasp holding the two halves of the handle together, it is clear that the merest touch of one half of the handle can result in the clasp falling open if the knife is pointed upwards. And once the clasp has fallen, then the blade of the knife is fully exposed with a mere flick of the wrist. I have concluded that since the clasp can open by the effect of gravity if the handle is touched that therefore this particular knife can open under the influence of gravity.

[12] The clasp that holds the two halves of the handle of the knife together is a piece of metal which seems to sit in a space designed for it in one half of the handle. The clasp, as I have indicated, can be undone very easily. Indeed, it would be accurate, in my view, to describe the clasp mechanism on this particular knife as a "hair trigger," if I can analogize to a firearm.

[13] On all the evidence before me, including the examination of Exhibit 3, I am satisfied beyond a reasonable doubt that the knife, Exhibit 3, is presently a prohibited weapon as that term is defined in the *Criminal Code*.

[14] The question that has troubled me is: What was the condition of the clasp on the knife at the time it was in the possession of Corporal Benedetti as admitted? I heard the evidence of Corporal Hunter, the military policeman, who testified to obtaining the item from the evidence custodian, presumably in preparation for his attendance in court today, but I do not have any evidence as to the condition of the clasp of the knife at the time it was obtained from Corporal Benedetti's possession.

[15] In the course of a few practise attempts with the clasp mechanism of the knife, I have discovered that it now opens in an easier way than it did when I first tried to open this knife, and so it seems to me that the clasp mechanism may have been firmer and more secure at some undetermined time in the past prior to its production before me today.

[16] It is not my job or intent to speculate on the condition of this particular knife at the time it was taken from the possession of Corporal Benedetti, but I cannot say that I am satisfied beyond a reasonable doubt that the clasp on Exhibit 3 was not operating in

a good deal more secure fashion at that time than it is at the present time. As a result, I am not satisfied beyond a reasonable doubt that on 23 November 2011 Corporal Benedetti was in possession of a prohibited weapon. I do not have any doubt that the item is presently a prohibited weapon.

FOR THESE REASONS, THE COURT:

[17] **FINDS** you not guilty with respect to charge No. 1, for an offence under section 130 of the *National Defence Act*, contrary to section 91(2) of the *Criminal Code*.

Counsel:

Major P. Rawal, Canadian Military Prosecutions Service
Counsel for Her Majesty the Queen

Major D. Berntsen, Directorate of Defence Counsel Services
Counsel for Corporal Benedetti