

**Citation:** *R. v. Private H.A. Castle*, 2008 CM 2006

**Docket:** 200745

**STANDING COURT MARTIAL  
CANADA  
ONTARIO  
CANADIAN FORCES BASE PETAWAWA**

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**Date:** 19 March 2008

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

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**HER MAJESTY THE QUEEN**

**v.**

**PRIVATE H.A. CASTLE**

**(Accused)**

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**FINDING**

**(Rendered orally)**

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[1] Private Castle, this court finds you not guilty of the first charge. You may break off and be seated beside your counsel.

[2] Private Castle is charged with two offences: In the first charge, a charge of assault upon former Private Belmonte, causing bodily harm; and in the second charge, failing to comply with a condition of her release that she abstain from communicating with Private Belmonte. Private Castle pleaded guilty to the second charge and the trial proceeded with respect to the assault charge.

[3] The evidence disclosed that in the early hours of a Saturday morning, 21 October 2006, Private Castle struck Private Belmonte on her nose with a full bottle of beer, fracturing the nose and causing severe pain and bruising. The issue in this case is whether the prosecution has established beyond a reasonable doubt that the striking of Private Belmonte was the intentional act of Private Castle.

[4] 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.

[5] 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.

[6] 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.

[7] The rule of reasonable doubt applies to the credibility of witnesses in a case, such as this case, where the evidence discloses different versions of the important facts that bear directly upon the issues. Arriving at conclusions as to what happened is not a process of preferring one version given by one witness over the version given by another. The court may accept all of what a witness says as the truth, or none of what a witness says, or the court may accept parts of the evidence of a witness as truthful and accurate. If the evidence of the accused as to the issues or the important aspects of the case is accepted, it follows that she is not guilty of the offence. But even if her evidence is not accepted, if the court is left with a reasonable doubt, she is to be found not guilty. Even if the evidence of the accused does not leave the court with a reasonable doubt, the court must look at all the evidence it does accept as credible and reliable to determine whether the guilt of the accused is established beyond a reasonable doubt.

[8] In this case, former Private, now Ms Belmonte gave evidence that as she was closing the door to Corporal Power's residence from the inside, the door was slammed back at her. It was Private Castle, and she seemed to be furious with Ms Belmonte. Ms Belmonte apologized to Private Castle for closing the door on her. Once inside the residence, in the small front hallway area, Private Castle was at the bottom of the stairs, just inside the the door, when she raised the beer bottle above her head and brought it down on Ms Belmonte's nose, causing the injury. Private Castle then ran up the stairs, calling Ms Belmonte names. Ms Belmonte was bleeding and very disoriented as a result of the blow. Master Corporal Nadon was holding Ms Belmonte with both arms when she was struck.

[9] Master Corporal Nadon also testified for the prosecution. He stated that he was inside the front door of Corporal Power's residence when Private Castle came in, and Private Castle accused Ms Belmonte of closing the door on her. They started name-calling and Master Corporal Nadon separated them physically. Things calmed down and he reached for a beer from a case on the floor and heard a hit and saw Ms Belmonte with blood on the nose. It was the sound that caught his attention. He then attended to Ms Belmonte.

[10] Private Castle testified that the front door was slammed on her as she approached it. She hit Ms Belmonte with beer bottle when she reached up with both hands to prevent the door being closed on her. At the time, she had the bottle in her right hand. She testified that she struck Ms Belmonte accidentally, apparently in the course of trying to prevent the closing of the door.

[11] The evidence of the accused was corroborated by the evidence of Corporal Power. I accept the evidence of Corporal Power, as he had a very good view of the events at the front door from a distance of apparently no more than a metre or two. Although he had been drinking beer all evening, there was no evidence that his consumption of alcohol affected his powers of observation and recollection. I consider that Corporal Power was an independent witness who had no motive to shade or colour his evidence in favour of one party or the other. I reject as unfounded on the evidence the suggestion that Corporal Power colluded with Private Castle.

[12] I do find that there are troubling inconsistencies in the evidence of Ms Belmonte and Master Corporal Nadon. In particular, he stated that he was not holding on to Ms Belmonte when the blow was struck; whereas, Ms Belmonte maintained that Private Castle put her right hand up, over Master Corporal Nadon's arm, which was around her body, in order to deliver the blow. It may be that Master Corporal Nadon's powers of observation and recollection were dimmed by his consumption of alcohol. Certainly, he seemed to suggest in the course of his evidence that his appreciation and understanding of the events in question was affected by the effects of alcohol consumption. It is apparent that the versions of the circumstances under which the blow was struck are very different, but having regard for all the evidence I am not satisfied that the blow was struck in the manner that Ms Belmonte testified to.

[13] The intention to apply force is an element of the offence of assault. This, of course, refers to the state of mind of Private Castle at the time the blow is struck. There is no direct evidence as to Private Castle's state of mind, apart from a passing reference in cross-examination to the striking being accidental, but I must have regard for all the surrounding circumstances in order to determine whether a proper inference can be drawn that she intended to strike Ms Belmonte. I find on all the evidence that I cannot be satisfied beyond a reasonable doubt that Private Castle intended to apply force to Ms Belmonte. Accordingly she is not guilty of assault.

COMMANDER P.J. LAMONT, M.J.

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