



COURT MARTIAL

Citation: *R v Thibeault*, 2012 CM 1015

Date: 20121024

Docket: 201250

Standing Court Martial

Asticou Centre Courtroom
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Captain J.R.N.J. Thibeault, Offender

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

[OFFICIAL ENGLISH TRANSLATION]

Restriction on publication: By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the person described in this judgment as the complainant shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

[1] On 19 October 2012, after a trial before the Standing Court Martial, Captain Thibeault was found guilty of sexual assault, contrary to section 271 of the *Criminal Code*, an offence punishable under section 130 of the *National Defence Act*. This Court must determine a fair and appropriate sentence in the circumstances. Counsel made a joint recommendation, and they recommend sentencing Captain Thibeault to six months in prison and a demotion to the rank of second lieutenant.

[2] The relevant facts in this case date back to around three o'clock in the morning of 4 February 2012, when the victim, G.R., sent text messages to the offender inviting him to watch a film with her later in the evening. She added, [TRANSLATION] "My bed is more comfortable, and I'm woozy after too much cider. [ENGLISH] You should come up here". To her, this meant watching a film together in her room, on her bed. She did not see anything sexual in the invitation, although she suspected that something could happen because of their past relationship. Moreover, they had had a recent conversation in which she had told him she was uncomfortable with continuing to have intimate conversations with him because they both had other people in their lives. Despite everything, she had feelings for Captain Thibeault, and the Court believes that she felt more than just affection for him, even though she said that she wanted them to be just friends. On the one hand, she did not want any more encounters with Captain Thibeault; on the other, she sought out his company, going so far as to invite him to watch a film in her bed. She also stated that Captain Thibeault was one of her few friends during the course.

[3] Around 1700 on 4 February 2012, the victim went to the officers' mess for a meal, as usual. When she returned to her room, she fell asleep in her bed. Between 2000 and 2100, Captain Thibeault came knocking at her door, DVD in hand, to ask her if she wanted to watch a film with him. She was wearing jogging pants and a T-shirt, while Captain Thibeault was wearing a jacket, a sweater, a T-shirt and pants. She invited him into her room, and after putting the DVD on, they settled onto the bed in a semi-seated position, about one foot apart. About 30 minutes after the film had started, Captain Thibeault got closer to her and started caressing the complainant's vaginal area, but overtop of her pants. She found it pleasurable, and it excited her sexually. After a few minutes, the complainant asked Captain Thibeault to stop it because the situation was making her uncomfortable and they were not supposed to be doing this. She then said, "It is not a good idea, we should not do this, it is not right." When she said these words, she moved away from him by rolling over on her stomach from left to right, with her face towards the headboard and her feet pointing towards the television set. Captain Thibeault then moved on top of her, putting his knees on either side of her torso, and he started kissing her on the neck and face. She felt pressure on her back, and he put his hand behind the nape of her neck while applying some pressure. The complainant again told him that they should not be doing this, but Captain Thibeault continued trying to kiss her. She turned her face away. According to G.R., she continued telling him that they should not be doing this, that she could not do this. Captain Thibeault did not react, and he continued. He then put one of his hands on the lower part of her neck, forced her head into the pillow and pulled down her pants and panties to mid-thigh, below her buttocks. The victim was slow to react, and she did not realize what was happening to her until Captain Thibeault put a finger in her anus. G.R. told him no, repeatedly—first quietly, two or three times, but loud enough for him to hear despite the background noise in the room. He continued. Captain Thibeault applied pressure to the nape of her neck, and her mouth was in contact with the pillow. She continued to tell him no, but louder, between seven and ten times, according to the complainant. She was crying. According to G.R., anyone in the room would have heard her saying no to Captain Thibeault. This went on for about a minute. The victim's body

did not really react until Captain Thibeault pulled out his finger, inserted his penis and sodomized her. This is when she tried to twist out of this position. He continued, even though she was still trying to get free. She continued saying no. According to the victim, she thought that Captain Thibeault sodomized her for a few minutes, despite the fact that she continued to tell him no. She was in pain at the time, as Captain Thibeault's penis penetrated deeper and deeper into her anus and thrust in and out of her more than five times. Suddenly, she screamed at him, "Get off of me", still squirming to get away from him. The victim then felt the pressure go away, and she slipped out of the bed, towards the left, still on her stomach, until her knees hit the floor. She fled to the bathroom to regain her senses. The victim came back out again a few minutes later, furious and profoundly saddened. The victim left the room with the offender to smoke a cigarette outside the building, to give him a chance to explain himself. Not satisfied with the excuses and the explanation given by Captain Thibeault, she returned to her room and cried. About an hour later, she confided in a close friend who lives nearby. They spent the rest of the evening together.

[4] The victim testified at the trial and at the sentencing hearing. Her testimony indicates that during the months following her sexual assault, she tried to act as if none of this had happened. She also continued sending text messages to Captain Thibeault and found herself in his company many times, sometimes on her own initiative, sometimes by chance. The victim did nothing to avoid being in Captain Thibeault's presence. On the one hand, G.R. tried to forget the breach of trust she had been subjected to, while on the other, she did not want to have to explain to the other members of her group why she suddenly decided to avoid being in the presence of someone who up to then had been her friend. By her own admission, it took her some time to realize that she did not have to feel guilty for what had happened to her. The toll of this assault was significant for the victim. She testified about the problems she had experienced as a result of encounters she had had with other Forces members and police officers in relation to the events surrounding her assault. The stress from these encounters made it difficult for her to sleep and to concentrate on her day-to-day activities. G.R. explained how this situation affected her academic performance, including the plagiarism incident that resulted in her dismissal from course AOBC 1201 and an occupational transfer, which permanently set back her career path in the Canadian Forces. To this day, she has difficulty trusting men. She sometimes has nightmares. G.R. stated that she has no contact with the offender today and does not intend to reconnect with him.

[5] The consequences of the finding and the sentence are considerable for Captain Thibeault. First, his commanding officer will recommend his release from the Canadian Forces in accordance with the Canadian Forces' policy on sexual misconduct and sexual disorders, despite his excellent performance to date. According to the evidence filed by the defence, the offender will also most likely have to inform the Ordre des ingénieurs du Québec of this conviction if he wishes to rejoin this professional body, as he has held a bachelor's degree in mechanical engineering since 2009. His professional future in the medium term is uncertain at best.

[6] In 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 are aimed for in light of the applicable principles, which vary slightly from one case to the next. The fundamental purpose of sentencing in a court martial is to maintain military discipline and build respect for the law by imposing fair sanctions having one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society where necessary;
- (d) to assist in rehabilitating offenders, in order to return them to their environment in the Canadian Forces or to civilian life; and
- (e) to promote a sense of responsibility in military members who are offenders.

[7] The sentence must also take into consideration the following principles. It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility—that is to say, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Before considering depriving an offender of liberty, the Court has a duty to consider whether less restrictive sanctions may be appropriate in the circumstances. Last, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender and to account for any indirect consequence of the verdict or the sentence on the offender.

[8] Counsel's joint submission must be consistent with the abovementioned objectives and principles that apply in the present case; otherwise, the Court has no choice but to reject it. In the present case, it is important to focus on the objectives of general deterrence and denunciation. As the Court of Appeal of Québec noted in *R v L. (J.J.)*, [1998] R.J.Q. 971, 126 CCC (3d) 235, leave to appeal refused by the Supreme Court of Canada, [1998] 2 SCR viii, there are several factors that must be considered in qualifying the criminal responsibility of an accused when passing sentence for sexual offences:

- (a) The intrinsic nature and seriousness of the offences (use of threats, violence, psychological pressure, manipulation, etc.);
- (b) The frequency of the offences and the time period over which they occur;
- (c) The abuse of the relationship of trust and authority between the offender and the victim;

- (d) The disorders underlying the commission of the offences (the offender's psychological distress, pathologies and deviance, intoxication, etc.);
- (e) The offender's prior convictions (proximity in time to the alleged offence, and nature of the prior convictions);
- (f) The offender's conduct after the offences were committed: confessions, co-operation with the investigation, immediate enrolment in a treatment program, rehabilitation potential, financial assistance where appropriate, compassion and empathy for the victims (remorse, regret, etc.);
- (g) The time between the commission of the offence and the conviction as a mitigating factor, depending on the conduct of the offender (offender's age, social and occupational integration, commission of other offences, etc.); and
- (h) The victim: gravity of the attack on his or her physical and psychological integrity, which may involve, among other things, age, the nature and magnitude of the assault, the frequency and duration, the victim's characteristics and vulnerability (mental or physical disabilities), abuse of trust or authority, lasting trauma, etc.

This case is an illustration of the maxim "No means no".

[9] In the present case, the Court finds the following aggravating factors:

- (a) the circumstances surrounding the breach of the relationship of trust that existed between Captain Thibeault and G.R. before the assault. Beyond the relationship of trust that has to exist between non-commissioned members and officers in the Canadian Forces, these two young adults had a special relationship;
- (b) the Court finds it very serious that Captain Thibeault took advantage of his presence in the victim's room to take advantage of her, when she invited him in; and
- (c) the harmful consequences that Captain Thibeault actions had on the victim and which continue to this day, as was previously described.

[10] However, the Court cannot ignore the fact that the accused is a young officer who is held in high regard by his peers and his superiors. The evidence submitted to the Court shows that Captain Thibeault is a highly motivated, professional and competent officer. Despite this, his professional future in the short and medium term is bleak. I referred to this a bit earlier. Finally, he has about five years of service in the Canadian Forces and has no criminal or disciplinary record.

[11] The parties have submitted to the Court past judgments, civilian and military, in support of their joint recommendation. In the context of this case in which the persons involved had a special relationship before the offence was committed, the case law submitted this morning by counsel is particularly relevant where it concerns sexual assaults committed by an acquaintance of the victim, for example, *R v Gormley*, 2011 PESC 7, and *R v R.J.J.*, 2010 ONSC 4494. It appears that sentences vary from a short term of imprisonment to a few years where the facts do not show extreme violence towards the victim or do not involve repeated assaults. The Court is satisfied that counsel's recommendation complies with the principle of parity in sentencing and in the context of the sentencing principles applicable under the *National Defence Act*. The Court endorses counsel's joint recommendation and thanks counsel for the additional information they provided this morning.

FOR THESE REASONS, THE COURT:

[12] **SENTENCES** the offender, Captain Thibeault, to a term of imprisonment of six months.

[13] **DEMOTES** him to the rank of second lieutenant.

[14] **MAKES** an order under section 196.14 of the *National Defence Act* for the taking of samples of bodily substances for the purpose of forensic DNA analysis.

[15] **MAKES** an order under section 227.01 of the *National Defence Act* subjecting the offender to the *Sex Offender Information Registration Act* for a period of 20 years.

AND

[16] **DOES NOT MAKE** an order under section 147.1 of the *National Defence Act*, in accordance with the express wishes of the Director of Military Prosecutions, who does not seek such an order.

Counsel:

Major E. Carrier, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander P.D. Desbiens, Defence Counsel Services
Counsel for Captain J.R.N.J. Thibeault