



COURT MARTIAL

Citation: *R v Leaman*, 2013 CM 4004

Date: 20130320

Docket: 201245

Standing Court Martial

Canadian Forces Base Edmonton
Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal D.S.L. Leaman, Offender

Before: Lieutenant-Colonel J-G Perron, MJ

REASONS FOR SENTENCE

(Orally)

[1] Corporal Leaman, having accepted and recorded your pleas of guilty to charges number 2 and 3, the court now finds you guilty of these charges and directs that the proceedings on the first charge be stayed. The court must now determine a just and appropriate sentence in this case.

[2] The statement of circumstances, to which you formally admitted the facts as conclusive evidence of your guilt, provides this court with the circumstances surrounding the commission of these offences. At the time of the offences, Corporal Leaman was deployed to Camp Blackhorse in Kabul, Afghanistan on Operation Attention. Corporal Leaman was part of a quick reaction force (QRF). He held the rank of private at the time of the offences.

[3] While on Camp Blackhorse, he carried his 9-millimetre pistol in a leg holster. The weapon state on Camp Blackhorse was amber. This meant that all weapons were to be loaded but not readied. A weapon is loaded when a magazine containing ammunition is placed in the weapon, but no round is in the chamber of the weapon. A weapon

is readied when a loaded magazine is in the weapon, and a round is in the chamber of the weapon, making it ready to fire.

[4] When the QRF was called out, Corporal Leaman would ready both his C7 carbine and his 9-millimetre pistol. When the QRF returned to camp, he would normally unload his weapon by removing the rounds from the chambers at the authorized clearing bays. Those authorized clearing bays were the only location where weapons were authorized to be unloaded on the camp.

[5] Corporal Leaman had been trained on the proper procedure for safely unloading a pistol at an authorized clearing bay. There is a magazine catch inside the magazine housing of the pistol which prohibits firing the weapon when there is no magazine inserted. By inserting a finger or object into the magazine housing, the magazine catch can be disabled, causing the hammer of the pistol to move into the fully forward position. This method was not authorized on Camp Blackhorse and is not part of the proper procedure for unloading a pistol. One danger associated with this unauthorized procedure is that if there is a round chambered in the pistol, disengaging the magazine catch in such a manner will cause the round to fire.

[6] At approximately 2020 hours on 11 July 2011, Corporal Leaman was watching television and fell asleep on his bed in his quarters. He was wearing his pistol in his leg holster. He awoke to find that his pistol had come out of his holster and was lying beside him on the bed. He saw that the hammer on his pistol was half-cocked. He was sure that there was no round in the barrel, but it did have one. He fully pulled back the hammer and pulled the trigger to release the hammer to the fully forward position. This caused his pistol to fire a bullet. The bullet traveled through a plywood wall, a mattress located on the top bunk of the adjoining room, Private Althorp's room, and hit a concrete wall, where it stopped.

[7] Corporal Leaman felt sick to his stomach. He was shaking. He thought that he might have injured or killed Private Althorp. Corporal Leaman ran into Private Althorp's room to see if he was there. Private Althorp was not there. No one was injured as a result of this discharge from Corporal Leaman's pistol.

[8] Corporal Leaman was in the hallway when he encountered some of the other members of the QRF. Someone asked what had happened and he replied that he had had a "ND". He then went inside Private Althorp's room to retrieve the bullet that he had fired and returned to the hallway with his pistol.

[9] While in the hallway, during the discussion, Corporal Leaman stated it was up to Corporal Darbison whether or not to report the negligent discharge. Corporal Darbison replied the negligent discharge was serious. During this conversation, Corporal Leaman was still holding his pistol that contained a second chambered round. Corporal Leaman placed his finger inside the magazine housing of his pistol, disengaging the magazine catch, which caused the firing of a second bullet.

[10] The second bullet hit Corporal Darbison in his right clavicle and exited through the back of his right shoulder, and hit the wall directly behind him. Another private aided and escorted Corporal Darbison to the medical centre located on Camp Blackhorse. Corporal Darbison was airlifted to Bagram Airfield, Kabul, and onward to Landstuhl Regional Medical Centre in Germany. Corporal Darbison did not return to Afghanistan as a result of the injury he sustained. Corporal Leaman was repatriated to Canada as result of the events that occurred on 11 July 2011.

[11] As indicated by the Court Martial Appeal Court, sentencing is a fundamentally subjective and individualized process where the trial judge has the advantage of having seen and heard all of the witnesses, and it is one of the most difficult tasks confronting a trial judge. The Court Martial Appeal Court clearly stated that the fundamental purposes and goals of sentencing as found in the *Criminal Code of Canada* apply in the context of the military justice system and a military judge must consider these purposes and goals when determining a sentence. The fundamental purpose of sentencing is to contribute to respect for the law and the protection of society, and this includes the Canadian Forces, by imposing just sanctions that have 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;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[12] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors. The sentencing provisions of the *Criminal Code*, sections 718 to 718.2, provide for an individualized sentencing process in which the court must take into account not only the circumstances of the offence, but also the specific circumstances of the offender. A sentence must also be similar to other sentences imposed in similar circumstances. The principle of proportionality is at the heart of any sentencing. Proportionality means a sentence must not exceed what is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence.

[13] A judge must weigh the objectives of sentencing that reflect the specific circumstances of the case. It is up to the sentencing judge to decide which object or objectives deserve the greatest weight. The importance given to mitigating and aggravating factors will move the sentence along the scale of appropriate sentences for similar offences. The court must impose a sentence that should be the minimum necessary sentence

to maintain discipline. The ultimate aim of sentencing is the restoration of discipline in the offender and in military society. Discipline is one of the fundamental prerequisites to operational efficiency in any armed force.

[14] The prosecution and your defence counsel have jointly proposed a sentence of a dismissal from Her Majesty's service. The Court Martial Appeal Court has stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[15] The prosecution suggests that the following principles of sentencing apply in this case: general deterrence and denunciation; while defence counsel suggests that specific deterrence and rehabilitation are the applicable sentencing principles.

[16] I will now set out the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case. I consider the following to be aggravating:

- (a) You committed two offences involving two separate negligent discharges of your 9-millimetre pistol. The court was not informed as to exactly why a bullet was in the chamber of your pistol when you were on your bed. You fired the first negligent discharge because you did not perform the correct procedures to make your weapon safe. You can count yourself lucky that no one was injured.
- (b) Witnesses stated that you were, "still in shock," "you could tell that he was visibly shaken," "he was green in the face," and, "he was, like, freaking out" when you were in the hallway after the first negligent discharge. You were obviously quite shaken by this event and you were not in total control of yourself at that precise moment.
- (c) You then committed the second offence because you again failed to follow the correct procedures for making your weapon safe. This time, you shot a fellow soldier. You can again count yourself lucky that he is still alive. His injury has affected some of his physical abilities, but it has not, at this time, compromised his career in the Canadian Forces or caused him serious long-term injury.
- (d) The prosecutor argued that you tried to cover up the first incident when you told Corporal Darbison that it was up to him to report the negligent discharge. You were quite shaken by your first negligent discharge and the thought of having possibly injured a fellow soldier. You were not thinking clearly. While this evidence does not reflect positively on you, I do not consider that it is a clear indication that you tried to cover up the situation.

- (e) The court was not provided any evidence these incidents caused any harm at Camp Blackhorse or anywhere else to the reputation of the Canadian Army or of the Canadian Forces.
- (f) While the success of the mission is critical, the safety of our soldiers is one of the most important considerations when deployed in a theatre of operation. The safe handling of weapons in quarters is a key component of ensuring the safety of our soldiers and we can clearly see the dire consequences when orders pertaining to weapons are not obeyed. Defence counsel even stated that a negligent discharge is not an uncommon offence in Afghanistan. This might be so but it does not excuse the offence or explain it. To the contrary, it means that correct measures must be applied to reduce the number of negligent discharges because the possible consequences of these omissions can be catastrophic. Corrective measures may be in the form of preventive and reactive measures.
- (g) Corrective measures must come from the chain of command, since it is ultimately responsible for the good order and discipline of Canada's Armed Forces. Corrective measures are also appropriate sentences that will adequately punish the negligent handling of weapons in quarters as well as the offender.

[17] As to the mitigating circumstances, I note the following:

- (a) You have pled guilty; therefore, a plea of guilty will usually be considered as a mitigating factor. This approach is generally not seen as a contradiction of the right to silence and of the right to have the prosecution prove beyond a reasonable doubt the charges laid against the accused, but is seen as a means for the courts to impose a more lenient sentence because the plea of guilty usually means that witnesses do not have to testify and that it greatly reduces the costs associated with the judicial proceeding. It is also usually interpreted to mean that the accused wants to take responsibility for his or her unlawful actions and the harm done as a consequence of those actions.
- (b) You attended the Psychological Services at Edmonton Garrison on 17 July 2011 and subsequently received treatment for insomnia and anxiety. You have been diagnosed as suffering from PTSD and a major depressive disorder since these events. You were treated from December 2011 until November 2012. You are not currently receiving formal psychotherapy, but you continue to require sleep medication. The prosecutor has stated this also demonstrates your remorse. I agree with her conclusion.
- (c) You are a first time offender. You were 21 years old at the time of the offence. You can be considered a youthful offender. You had been a

member of the Canadian Forces for three years at the time of the offences. Although you had been trained on the weapon, you were still a relatively young and inexperienced soldier. Exhibit 9, a file review upon promotion, indicates that you are an average soldier and that the disciplinary and administrative issues should not impede your not promotion to the rank of corporal.

[18] I will now address the delay in bringing this matter to trial. The offences occurred on 11 July 2011. The CFNIS investigated and charges were laid on 23 November 2011. Corporal Leaman's unit, 3rd Battalion, Princess Patricia's Canadian Light Infantry, referred the charges to Commander Land Forces Western Area (LFWA) on 4 April 2012. Commander LFWA then referred the charges to Director Military Prosecutions (DMP) on 3 May 2012. The referral package was received by DMP on 15 May 2012. A charge sheet was signed by the prosecutor on 26 June 2012. An application to set a trial date initiated by the prosecutor was heard in November 2012 and we are now holding this trial on 18 and 19 March 2013.

[19] It thus took approximately three months for his unit to refer the charges to the referral authority and then one month for the referral authority to forward these charges to DMP. A Canadian soldier is shot by a fellow soldier in his quarters in Afghanistan because of a negligent handling of a service weapon. These are serious allegations that have an important impact on discipline, on operations, and on each person involved in the incident. It is critical for discipline and for the accused that these matters are dealt with in the most expeditious manner.

[20] No explanation was given to the court as to why it should take three months for the unit to refer these charges or one month for the referral authority to forward these charges to DMP. The prosecutor has indicated she will discuss this issue with AJAG Edmonton. I encourage her to do so. Unjustified delays in bringing any disciplinary matter to trial will usually have an adverse effect on discipline as well as on the accused. Neither is beneficial to good order and discipline as well as to the morale of our soldiers. As such, although this delay is not one that would attract scrutiny at the constitutional level, I find it must be noted and considered as a slight mitigating factor.

[21] I have concluded that general deterrence and denunciation are the main sentencing principles that need to be applied in the present case. The scale of punishment found at section 139 of the *National Defence Act* reads as follows:

- (a) imprisonment for life;
- (b) imprisonment for two years or more;
- (c) dismissal with disgrace from Her Majesty's service;
- (d) imprisonment for less than two years;
- (e) dismissal from Her Majesty's service;

- (f) detention;
- (g) reduction in rank;
- (h) forfeiture of seniority;
- (i) severe reprimand;
- (j) reprimand;
- (k) fine; and
- (l) minor punishments.

[22] One can see that dismissal from Her Majesty's service is a more severe punishment than detention. The punishment of detention has a rehabilitative purpose as well as a punitive purpose, while the punishment of imprisonment only has a punitive purpose. Basically, detention is used to help a soldier become a better soldier. Dismissal from Her Majesty's service sends a message to the offender and to society that the offender is not the type of person we wish to keep within the profession of arms, because he or she has not demonstrated the qualities we seek in our soldiers.

[23] The joint submission of a sentence of dismissal from Her Majesty's service indicates that the prosecution and the accused both agree that the appropriate sentence in this case is the expulsion of Corporal Leaman from the profession of arms.

[24] Having reviewed the totality of the evidence presented to the court, the jurisprudence, and the representations made by the prosecutor and your defence counsel, I have come to the conclusion that the proposed sentence correctly reflects the seriousness of the offences while taking into account the specific circumstances of the offender. I have also come to the conclusion that the proposed sentence would not bring the administration of justice into disrepute and that it is in the public interest. Therefore I agree with the joint submission of the prosecutor and of your defence counsel.

FOR THESE REASONS, THE COURT:

[25] **SENTENCES** Corporal Leaman to dismissal from Her Majesty's service.

Counsel:

Lieutenant-Commander B.G. Walden, Directorate of Defence Counsel Services
Counsel for Corporal D.S.L. Leaman

Lieutenant-Commander S. Torani, Canadian Forces Prosecution Services
Counsel for Her Majesty the Queen