

Citation: *R. v. Ordinary Seaman D.Dicks*, 2004 CM 31

Docket: F200431

**STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
6080 YOUNG STREET, 5TH FLOOR, SUITE 506, HALIFAX**

Date: 7 July 2004

PRESIDING: COMMANDER P. LAMONT, M.J.

HER MAJESTY THE QUEEN

v.

**ORDINARY SEAMAN D. DICKS
(Accused)**

**FINDING
(Rendered Orally)**

[1] Ordinary Seaman Dicks, this court finds you guilty of the first charge and not guilty of the second charge. You may break off and take a seat beside your defence counsel.

[2] The accused, Ordinary Seaman Dicks, is charged with two offences. The first charge is that, with intent to deceive, he altered a document made for a military purpose, and the second is a charge that he absented himself without leave for a period of days in August of 2003.

[3] It is the theory of the prosecution that the accused was properly issued a form 2018, Sick Report, on 5 August 2003, indicating two days' excused duties, and then altered the form to read 12 days. He then failed to report to his ship, HMCS HALIFAX, during the period following the expiration of the period of excused duties, until his absence was discovered on 13 August 2003.

[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 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 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.

[6] The elements of the offence of altering a document made for a military purpose with intent to deceive are as follows: first of all, the identity of the accused; secondly, the date and place of the offence as particularized in the charge; thirdly, the alteration of a document; fourthly, that the document was made for a military purpose; and lastly, the mental element of intention to deceive; that is, that the accused had knowledge of the falsity of the document, but intended that others should accept it as being genuine.

[7] There is no issue in this case as to the identity of the offender, and the date and place of the commission of the offence alleged. Nor is there any issue that the document in question, a completed form 2018, Sick Report, also known and referred to in the evidence as a "sick chit," was made for a military purpose; that is, for use by medical personnel to permit a member of the Canadian Forces to be absent from his or her place of work for a stated period of time for medical reasons. The main issue in this case is whether the evidence establishes beyond a reasonable doubt that the accused altered the sick report form.

[8] The evidence establishes, that on 5 August 2003, Ordinary Seaman Dicks attended the emergency department at the Stadacona hospital in Halifax, Nova Scotia. He had been suffering from a condition since at least June of 2002, for which he appears to have been on medication at the time of his attendance. In accordance with the practice at the hospital, an unknown person filled out the top portion of the form 2018, Sick Report, with identifying particulars of Ordinary Seaman Dicks. Petty Officer 1st Class Savoie, a Physician's Assistant, attended upon Ordinary Seaman Dicks at the hospital. He testified that the accused arrived in company with Master Corporal Baxter. Master Corporal Baxter, a medical technician in charge of the HALIFAX's sick bay, had previously advised Petty Officer 1st Class Savoie that Ordinary Seaman Dicks

should be given two days excused duties. After seeing Ordinary Seaman Dicks, Petty Officer 1st Class Savoie agreed that this was appropriate and he, therefore, made entries on the 2018 form indicating, "two days medicine and excused duties," and signed the form in the lower right hand block entitled, "signature of MSP." There does not appear to be a signature block for the signature of the patient on a form 2018.

[9] The form 2018 relating to Ordinary Seaman Dicks on 5 August 2003, is in evidence before me. It consists of an original and a carbon copy that is made at the same time as the original. The original is kept and maintained by the hospital as part of its records. The carbon copy is given to the patient in order for the patient to supply the copy to his or her supervisor. Petty Officer 2nd Class Edwards testified that he recalled receiving a sick chit from Ordinary Seaman Dicks in August of 2003, and it was for a period of more than two days. Petty Officer 2nd Class Edwards then told Ordinary Seaman Dicks to go home and rest, and passed the sick chit on to his superiors. The document was filed in the shore office of HMCS HALIFAX.

[10] In my view, a comparison of the original form 2018, Exhibit 3 in this case, with the carbon copy supplied to the accused, marked as Exhibit 4, clearly shows that the document has been altered. The digit "1" has been added in two different places on the form immediately before the number "2" entered by Petty Officer 1st Class Savoie to indicate the number of days excused duties. There are no other significant differences in the handwritten portions of the two documents, and I conclude that these documents are, indeed, the two parts of the form 2018 completed by Petty Officer 1st Class Savoie, in duplicate, on 5 August 2003.

[11] Counsel on behalf of Ordinary Seaman Dicks argues that the marks indicating the added digit "1" may have already been on the carbon copy, Exhibit 4, at the time Petty Officer 1st Class Savoie completed the original. In cross-examination of Petty Officer 1st Class Savoie, defence counsel demonstrated, to my satisfaction, that, indeed, a mark made on a sick report form by the use of ordinary pressure will appear on the carbon copy of a similar form which is placed underneath the form on which the mark is made, although the same mark will not appear on the original of the form that is underneath the form on which the mark is made.

[12] Nevertheless, in my view, from a comparison of the two documents, it is plain and obvious that the digit "1" was added after the form was completed by Petty Officer 1st Class Savoie. It would be an extraordinary coincidence that two similar markings, and only such markings, would have been made on the carbon copy at just the right place to indicate the No. "12" rather than the No. "2". I am not persuaded that such a coincidence occurred. I am satisfied beyond a reasonable doubt that the carbon copy of the form was altered from the original by the addition of the digit "1" in two places on the carbon copy of the form.

[13] Petty Officer 1st Class Savoie testified that he told the accused that he was excused duties for two days. However, he also testified that Master Corporal Baxter was present with the accused when he made this statement. Master Corporal Baxter testified and denied accompanying Ordinary Seaman Dicks to the emergency department on 5 August 2003, and stated he was not present to hear what may have passed between Ordinary Seaman Dicks and Petty Officer 1st Class Savoie. I am not satisfied that Petty Officer 1st Class Savoie orally advised Ordinary Seaman Dicks that he was issuing a sick chit for two days' excused duty. In my view, however, this conclusion does not affect the conclusion that the carbon copy of the form was altered.

[14] I also conclude that the alterations were made by the accused. On the evidence in this case, the accused was the only person to have possession of the carbon copy, Exhibit 4, from the time he obtained it from Petty Officer 1st Class Savoie, in an unaltered condition, until he supplied it to Petty Officer 2nd Class Edwards, who read the document as referring to more than two days' excused duties. It follows that the accused was, indeed, aware of the falsity of the document he presented to Petty Officer 2nd Class Edwards as being genuine. He intended that Petty Officer 2nd Class Edwards should treat the altered document as genuine and authorize him to be absent for a period of 12 days rather than the two days that Petty Officer 1st Class Savoie had authorized.

[15] I, therefore, find an intention to deceive on the part of the accused. Ordinary Seaman Dicks is, therefore, found guilty of the first charge.

[16] The second charge of absenting himself without leave particularizes that Ordinary Seaman Dicks failed to return to his ship on 7 August 2003, being the date of the expiry of the absence authorized by Petty Officer 1st Class Savoie, and remained absent until 13 August 2003. On the date of 13 August, after making some inquiries at the Stadacona hospital and looking at unit records maintained at the shore office, Petty Officer 1st Class Rhynold reached Ordinary Seaman Dicks by telephone and ordered him to get to the office. There is no evidence that Ordinary Seaman Dicks did not report as required on 13 August.

[17] To succeed in proving a charge of absence without leave, the prosecution must establish an obligation upon the accused to be at a specified place, knowledge on the part of the accused as to the obligation, and a lack of authorization to be absent. As to the requirement of knowledge, it is sufficient if the accused should have known of the obligation upon him to be at the specified place.

[18] On the whole of the evidence, I am not satisfied beyond a reasonable doubt that the accused was absent from his place of duty during the time period alleged in the second charge. I have considered what I have found to be his deceitful attempt to excuse his absence for the time period concerned, as well as the evidence of Petty Officer 2nd Class Edwards, that he, Petty Officer 2nd Class Edwards, was aware of which of his personnel were present and which were not. However, the quality of the

evidence leaves me in a state of doubt as to this element. The accused is entitled to the benefit of that doubt, and he is, therefore, found not guilty of the second charge.
Captain Reichert.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Captain K.A. Reichert, Regional Military Prosecutions Atlantic
Counsel for Her Majesty the Queen

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Counsel for Ordinary Seaman D. Dicks