

Citation: *R. v. Second Lieutenant D. Baptista*, 2004 CM 23

Docket: F200423

**STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
14 WING GREENWOOD**

Date: 3 November 2004

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

HER MAJESTY THE QUEEN

v.

**SECOND LIEUTENANT D. BAPTISTA
(Accused)**

FINDING

(Rendered orally)

[1] Second Lieutenant Baptista, this court finds you guilty on the first charge of forgery and guilty on the second charge of uttering a forged document.

[2] The accused, Second Lieutenant Baptista, is charged with two offences contrary to section 130 of the *National Defence Act*. That section makes the breach of any federal law a service offence for the purposes of the Code of Service Discipline. In this case, the accused is charged with the criminal offences of forgery and uttering a forged document contrary to the *Criminal Code*. The charges arise out of his dealings with a quotation for the supply of building materials.

[3] 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.

[4] 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.

[5] 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 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 to 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.

[7] If the evidence of the accused as to the issues or the important aspects of the case is accepted, it follows that he is not guilty of the offence. But even if his evidence is not accepted, if the court is left with a reasonable doubt, he 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] Most of the significant facts that emerged in the evidence in this case are not in dispute. In the spring of 2002, the accused decided to become involved in the house-building industry. He presented a house plan to Mr Clyde Forsyth, an employee of Palmer Home Hardware Building Centre in Berwick, Nova Scotia, and Mr Forsyth prepared a written cash quote of prices for materials to build the house. The quotation document is in evidence as Exhibit 4 in these proceedings. It consists of ten pages listing the many items necessary to build the house together with the required quantities of each item, the unit price of the items, and the cost amount. The total cost is given as \$30,082.25.

[9] The name, address, and telephone numbers of Palmer Home Hardware Building Centre appear at the top centre of each page on what is apparently a pre-printed part of the form. At the top left corner of each page, the logo of "Home Building Centre" appears. In addition, the name, address, and telephone number of

"Palmer Home Hardware Bldg Centre" appears to be typed below the pre-printed logo. Below the heading "cash quote" on each page, there appears certain customer identification information referring to Dean Baptista. Each page is connected by a perforated hinge between the bottom of one page to the top of the next page.

[10] The accused was naturally interested in obtaining the best prices he could in the market for building materials. He visited the Central Home Improvement store in Windsor, Nova Scotia and spoke to Mr Terry Chisholm. Mr Chisholm also supplied a quotation for building materials and prices. The accused and Mr Chisholm also discussed the policy of Central Home Improvement which was to beat their competitor's prices. When the accused referred to some items in Mr Chisholm's quotation as being higher than the competition, Mr Chisholm requested a hard copy verification of the competitor's prices before the price competition policy would be honoured by Central.

[11] Thereafter, Mr Chisholm received a fax transmission from the accused. The document is an exhibit in these proceedings, Exhibit 5. On its face it appears it was faxed on May 3, 2002 from a fax number used by the accused. The faxed document resembles, in important respects, the cash quote document from Palmer Home Hardware, Exhibit 4. It consists of ten pages with customer identification information referring to Deam Baptista. Also in the customer identification information area, the employee number for Mr Forsyth, W-21, appears.

[12] The fax lists the same materials from the Palmer Home Hardware quotation. The logo of Home Building Centre appears in the top left corner of each page of the fax. However, the name, address, and telephone numbers of Palmer Home Hardware have been blacked out at the top of each page of the fax. As well, the listed building supplies appear in a different typeface from the font used on the Palmer Home Hardware quotation. All but one of the unit prices quoted for the same building materials are less than the quoted prices from Palmer Home Hardware, and thus the total cost of materials in the faxed document is \$24,543.31.

[13] Mr Chisholm brought the fax to the attention of his superior, Blair Weatherbee. There were concerns that some of the prices listed in the faxed document were considerably below the cost to Central and would eliminate any profit on the proposed transaction. Mr Weatherbee made some inquiries in an attempt to determine who in the building supply industry had offered such low prices. On May 15, 2002, he spoke to Mr Mike Lavergne at Palmer Home Hardware and faxed him a copy of the fax received from the accused. He also spoke to the accused who told him that he had gathered all the prices from other competitors, and had put those prices on one quote. Eventually, Mr Weatherbee decided to close the accused's account.

[14] The accused gave evidence. He confirmed that he dealt with Mr Chisholm at Central and that Mr Chisholm required documentation in order to match

better prices that the accused obtained from their competitors. He testified that he scanned the quotation from Palmer Home Hardware into his computer. By the use of a computer programme, he then modified the prices and amounts on the Palmer quotation to reflect the lowest prices he had found in the market for each of the specified building materials.

[15] He testified that his computer document named each of the suppliers who had given the lowest price quote for each item. He faxed the document, Exhibit 5, to Mr Chisholm after blacking out the information identifying Palmer Home Hardware. He maintained that the document he faxed was merely a compilation of the best prices he could find for each of the items listed in the quote, and that both Mr Chisholm and Mr Weatherbee knew that the document he was sending was just a list of prices.

[16] He testified that although his computer document attributed the price for each item to a named supplier, this information did not get into the fax document because the computer document was too large. By the time he became aware that he was under investigation for these offences, he had replaced his computer, and the information listing the suppliers with the lowest prices for each item was now lost.

[17] The offence of forgery consists of the following elements:

1. that the accused made a false document;
2. that the accused knew that the document was false at the time it was made;
3. that the accused intended that the document be considered genuine; and
4. that the accused intended that some other person be deceived by treating the document as genuine.

[18] The terms "document" and "false document" are both defined in section 321 of the *Criminal Code*. There is no doubt that Exhibit 5 is a document. The meaning to be given to making a false document is extended by subsection 366(2) of the *Criminal Code* and includes "altering a genuine document in any material part". In my view, when the accused scanned the cash quotation document from Palmer's Home Hardware into his computer and entered new data into the fields for "price" and "amount" he altered a genuine document.

[19] It is not every misstatement of fact in documentary form that constitutes a false document. The falsity of the document must be such as to deceive the reader as to the nature of the document. In this sense, a document that tells a lie about itself is a false document.

[20] In the present case, Exhibit 5 appears on the face of it to be a quotation by the Home Building Centre that a long list of building materials will be sold at a total price which is significantly less than the price at which Palmer's Home Hardware was willing to sell these materials to the accused. It was not, in fact, a quotation by Home Building Centre, although that is precisely what it was represented to be by the accused when he faxed it to the Central Home Improvement firm in Windsor, Nova Scotia. I conclude that Exhibit 5 is a false document.

[21] The accused testified that the document he created was merely a list of the best prices he could obtain for each of the many specified building materials from other suppliers. It appears that he took this position with Mr Weatherbee. I do not accept the evidence of the accused that the document he created was merely a list of the best prices he could obtain from other suppliers for each of the many specified building materials. The document he supplied was in response to the statement of Mr Chisholm that the discount policy would not be applied unless a hard copy verification of the competitor's quotation was supplied to Central Home Improvement. The document that the accused supplied was not responsive to this request unless the reader read the document as a quotation from Home Hardware Building Centres, which the accused maintains it was not. Secondly, on his own evidence, the accused claimed he had in fact obtained quotations from other suppliers at the lower prices reflected in the document, Exhibit 5, but there is no evidence that any of this material, which would have been responsive to Mr Chisholm's request, was supplied to Central Home Improvement.

[22] Although the accused claims this material is now lost, there is no evidence that this material was not available at the time the accused took the position with Mr Weatherbee that the document was merely a list of prices available from other unnamed competitors. Both Mr Chisholm and Mr Weatherbee treated the document as a quotation from an unknown Home Building Centre dealer, and I find that both acted reasonably in treating the document, Exhibit 5, in this way.

[23] The accused knew of the falsity of the document. He was the one who prepared it by scanning the genuine document into his computer and altering nearly all the figures in the columns headed "price" and "amount".

[24] I find that the accused intended that the document, Exhibit 5, be treated as genuine. He intended that the Central Home Improvement firm should treat the document as a genuine quotation from Home Building Centre, either for the purpose of negotiating a lower price for the products to be supplied by Central Home Improvement, or for the application of the discount policy of Central. Either result would be a financial advantage to the accused.

[25] It follows from the foregoing that the accused intended to deceive Central as to the prices at which he could obtain the building materials from Home

Building Centre. In the result, it follows that the accused is guilty of the offence of forgery charged in charge number 1.

[26] Charge number 2 charges the offence of uttering a forged document. Section 368(1) of the *Criminal Code* reads as follows:

Everyone who, knowing that a document is forged,

(a) uses, deals with or acts on it, or

(b) causes or attempts to cause any person to use, deal with, or act on it, as if the document were genuine ...

is guilty of the offence of uttering a forged document.

[27] I have already found that the document, Exhibit 5, is a forged document and that the accused knew it to be a forgery. The accused used and dealt with the forged document when he faxed it to Central Home Improvement on May 3, 2002. In so doing he attempted to induce either Mr Chisholm or someone else at Central Home Improvement to treat the document as a genuine quotation from Home Hardware. He is therefore guilty of the offence of uttering the forged document.

COMMANDER P.J. LAMONT, M.J.

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