

Citation: *R. v. Private A.G. Doling*, 2005CM14

Docket: F200514

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

Date: 18 July 2005

PRESIDING: COLONEL K.S. CARTER, M.J.

HER MAJESTY THE QUEEN

v.

PRIVATE A.G. DOLING

(Accused)

FINDINGS

(Rendered verbally)

[1] It is useful to begin with a review of the offences that are outstanding against Private Doling; that is, two offences of public mischief, and what it is that the prosecution must establish beyond a reasonable doubt. In relation to the first charge, the prosecution must establish beyond a reasonable doubt that between the 8th of March and the 6th of April 2004, at CFB Trenton and Napanee, Private Doling, with intent to mislead, caused Corporal Parsons to enter upon or continue an investigation by reporting the offence of sexual assault had been committed when it had not been committed and that she did this with the required mens rea; that is, she did this action knowingly, voluntarily and with intent to mislead. In relation to the second charge, the essential elements that the prosecution must prove beyond a reasonable doubt are that between the 8th of March and the 6th of April at Canadian Forces Base Trenton and Napanee, Private Doling, with intent to mislead, caused Master Corporal Decoeur and Sergeant Bolduc of the military police to enter upon or continue an investigation by reporting that the offence of theft had been committed when it had not been committed, and again, that this was done with the requisite mens rea; that is, knowingly, voluntarily and with intent to mislead.

[2] The principal issues in this case are whether the prosecution has proven beyond a reasonable doubt firstly, that the offences of sexual assault and theft had not been

committed; secondly, that Private Doling knew this, but nevertheless, with intent to mislead, reported these offences; and thirdly, that Private Doling's report caused military police to enter upon or continue investigations into a sexual assault and a theft.

[3] As has been evidenced throughout this trial, the issue of the mens rea; that is, the mental state of Private Doling at the time the offences are alleged to have occurred is a very important question. Although the defence presented an application at the beginning of this trial for an order to have the fitness; that is, the mental fitness of Private Doling to stand trial, evaluated, there has been no defence of mental disorder raised under section 202.13 paragraph (1) of the *National Defence Act* or article 119.33 of Queen's Regulations and Orders; that is, that at the time of these offences, Private Doling suffered from a mental disorder that rendered her incapable of appreciating the nature and quality of the act alleged or of knowing that it was wrong. Colloquially speaking, it was not argued that Private Doling was insane, either temporarily or otherwise, at the time of these offences. Nevertheless, in Canada, even when a mental disorder is not raised in that context, our criminal law and that includes military law as applied at courts martial, requires that evidence of the mental state and capacity of the accused person to form the required mens rea or comparable mental state at the time of the commission of the offences is required.

[4] Public mischief is a specific intent offence, in that the accused must report the matter with the intent to mislead. That may not be the only or indeed the primary reason for the actions of the accused person, but the prosecution must establish beyond a reasonable doubt that the accused person in a public mischief charge acted not only knowingly and voluntarily; that is, without duress or threat, but also acted with intent to mislead. For exist at the end of a trial a reasonable doubt that the accused person acted with intent to mislead, then the accused person must be found not guilty. The mental state or capacity of the accused at the time of the commission of the actions which formed the basis for the offences must therefore be considered.

[5] As this court martial has been spread out over several months, it would be useful to summarize briefly its conduct. The charges deal with events which occurred between the 20th of February and the 6th of April 2004. The charges were preferred on the 10th of December 2004. The court martial was convened on the 5th of January 2005 to commence on the 22nd of February 2005 at CFB Saint-Jean. An application by the defence on behalf of Private Doling for a change of venue from Saint-Jean to Kingston was made on the 21st of February 2005. Medical evidence was presented and an application was granted. The court martial began at CFB Kingston on Tuesday the 22nd of February 2005. At that time an application by the defence on behalf of Private Doling for an order for an assessment of her fitness to stand trial was heard. The evidence consisted of testimony of various medical practitioners and others. An order was made on the 23rd of February and an assessment was completed and delivered to the court on the 3rd of March. As will be evident from the

fact that we have proceeded to a trial, the assessment was that Private Doling was fit to stand trial. Pleas were taken on the 3rd of March and at that time, Private Doling pled guilty to charges three, four and five, of absence without leave and two offences of an act to the prejudice of good order and discipline. During the main body of the trial the prosecution called 10 witnesses, Master Corporal Parsons, a military policeman; Corporal Rancourt, a member of the National Investigative Service; Master Corporal Decoeur, another member of the National Investigative Service; Mrs Beattie, a member of the PAT, that is Persons Awaiting Training platoon at CFB Saint-Jean during the February & March 2004 time frame; Captain Lussier, a padre at CFB Saint-Jean in the March 2004 time frame; Corporal Azpiroz, a Canadian Forces member and Private Doling's common-law spouse in Trenton in the 2003 & 2004 time frame; Sergeant Pelanconi, the second-in-command of a platoon at Canadian Forces Base Saint-Jean of which Private Doling was a member in January and February 2004; Commissionaire Brousseau, who worked as a gate guard at Canadian Forces Base Saint-Jean in March 2004; Petty Officer 2nd Class Malenfant, which for those who wear Army uniforms is a warrant officer, platoon commander of the Persons Awaiting Training platoon at Canadian Forces Base Saint-Jean, where Private Doling was posted in February 2004; Petty Officer 1st Class Carbonneau, a National Investigation Service investigator who was involved in the investigation of Private Doling's actions reporting sexual assault; Sergeant Lavoie, a National Investigation Service investigator who was Petty Officer 1st Class Carbonneau's partner for this investigation into Private Doling's report.

[6] The defence called two witnesses, Private Doling and an expert witness, Doctor Mauri, a psychologist who has been treating Private Doling since the summer of 2004.

[7] Due to the assessment order and the schedules of various witnesses and other participants in the trial, the sittings were held on the following dates: February the 22nd and 23rd, 2005; March the 3rd and 4th, 2005; March 16th, 17th and 18th, 2005; May the 2nd to the 6th, 2005; and subsequently today. The delays in this matter have certainly made it more difficult for all of those who have been involved and more complex, perhaps, than usual for a court martial which traditionally begins and continues through until its end. Indeed, the challenges in this case may highlight the desirability of that process.

[8] Having reviewed the history of the case I think it would be useful to explain the fundamental principles which are applicable to every civilian criminal trial in every court martial in Canada. These are well-known to counsel but perhaps less so to other participants and to other people in the courtroom. The two fundamental principles are: the presumption of innocence and the proof beyond a reasonable doubt. These two principles have been described in the Supreme Court of Canada by Mr Justice Cory in a decision called *Lifchus* which can be found at (1997), 118 C.C.C. (3d) 1. In that decision, at page ten, Mr Justice Cory states:

If the presumption of innocence is the golden thread of criminal justice then proof beyond a reasonable doubt is the silver and these two threads are forever intertwined in the fabric of criminal law.

An accused person is presumed innocent throughout his or her trial. This presumption remains with the accused person from the beginning of the trial until all the evidence has been heard and has been considered and the finder of facts, whether that be a military panel, a civilian jury or a judge, has been satisfied beyond a reasonable doubt of the guilt of the accused. The fact that a person has been charged is in no way indicative of his or her guilt. The burden of proving guilt beyond a reasonable doubt rests with the prosecution. There is no burden on the accused person to prove his or her innocence. If the court has a reasonable doubt that the accused committed an offence with which he or she is charged, then the benefit of the doubt must be given to the accused and he or she must be found not guilty of that charge.

[9] The Supreme Court of Canada has explained in that same case, *Lifchus*, what a reasonable doubt is and here I will summarize what was written at page 13 of the decision: A reasonable doubt is a doubt based upon reason and commonsense, not upon sympathy and prejudice. It is one logically connected to the evidence or the absence of evidence, not an imaginary or frivolous doubt. While it does not involve proof to absolute certainty, it requires more than proof that an accused is probably guilty.

[10] I would add that if a court only concludes that an accused is probably guilty; that is, more likely than not, then the court must find the accused not guilty. Probability does not equal beyond a reasonable doubt. A reasonable doubt in *Lifchus* is described as one that is held after a fair, thorough and impartial consideration of all the evidence before the court. The standard of proof at a criminal trial and that includes a court martial, is a higher one than is used in everyday decisions or decisions in civil cases where people are suing each other or in decisions made about administrative matters. It has a significance unique in the legal process. It is an exacting standard of proof rarely encountered in everyday life. While the court considers the evidence as a whole to determine whether the guilt of the accused has been proven beyond a reasonable doubt, the burden is on the prosecution to prove each essential element of the offence beyond a reasonable doubt. If there is a reasonable doubt concerning only one essential element of the charge, the accused must be given the benefit of the doubt. However, the standard of proof beyond a reasonable doubt does not apply to the individual items of evidence which make up the prosecution's case, but to the total body of evidence which the prosecution relies upon. Evidence can come in many forms, documents, photographs, maps. Often evidence is in the form of sworn or affirmed oral testimony or witnesses before the court. It is not unusual that some evidence before the court is contradictory. Often witnesses have different recollection of events. The court must determine what testimony it finds credible and credible is not synonymous with telling the truth and a lack of credibility is not synonymous with lying. Simply put, a sincere witness honestly

endeavouring to tell the truth may still give unreliable evidence. Many factors influence the court's assessment of the credibility of a witness. These include a witness's opportunity to observe; a witness's reasons to remember, for example, were the events noteworthy, unusual, striking or relatively unimportant and therefore more difficult to recollect? Does the witness have any interest in the outcome of the trial? That is, a reason to favour the prosecution or the defence, or is the witness impartial? This last factor applies in a somewhat different way to the accused person. Even though it might seem reasonable to assume the accused is interested in securing his or her acquittal, the presumption of innocence, which I mentioned earlier, does not permit a conclusion that the accused will lie if he or she chooses to testify.

[11] Another factor in determining credibility is the apparent capacity of the witness to remember. Emotional restrictions may also affect a witness's credibility. That is, a witness may be so nervous, scared, angry or elated that this affects their ability to observe. Or a witness may be under the influence of alcohol or prescription or non-prescription drugs. The witness's demeanor is also a factor that can be used to assess credibility; that is, was she or he responsive to questions, straightforward in his or her answers or evasive, hesitant or argumentative. Finally, and quite importantly in this case, was the witness's testimony consistent within itself and with any uncontradicted facts. Minor discrepancies can and do innocently occur but these do not necessarily mean that the testimony should be disregarded. However, a deliberate falsehood is an entirely different matter, it is always serious and may taint a witness's entire testimony. A court is not required to accept the testimony of any witness except to the extent that he has impressed the court as credible. However, a court will accept evidence as trustworthy unless there is a reason to disbelieve it.

[12] Now, this is a case where the accused person; that is, Private Doling, has chosen to testify and the Supreme Court of Canada has established in those circumstances what the court must do. In a case called *R. v. W.(D.)* which is found at (1991), 63 C.C.C. (3d) 397. The Supreme Court of Canada has set out a process for this court to follow. First, the court must analyse whether or not the accused is believed, and there is by implication an assumption that the accused's testimony would exculpate the accused if believed, which is certainly the situation here. If, however, the accused is not believed but nevertheless the testimony of the accused raises a reasonable doubt, then again, the court must find the accused not guilty. Finally, if the testimony of the accused person is not believed and does not raise a reasonable doubt, but still a reasonable doubt exists on the basis of the evidence that the court accepts, then again, the court must find the accused person not guilty. It is only if the court does not have a reasonable doubt about any of the essential elements of the charge, the court will find the accused guilty.

[13] There are a large number of facts which are agreed upon by the various witnesses in this matter that are essentially uncontested and which the court thinks it should outline before moving to the issues where there are varying accounts or perceptions of what

occurred. When the court treats facts as uncontested, this includes situations where any of the witnesses, including Private Doling's account, is simply, "I do not remember." "I do not remember" does not contradict an account. In constructing this chronology the court will indicate that it found the testimony of Corporal Azpiroz, Sergeant Pelanconi, Petty Officer 2nd Class Malenfant, Mrs Beattie, Master Corporal Parsons, Corporal Rancourt, Master Corporal Decoeur, Petty Officer 1st Class Carbonneau, Sergeant Lavoie and Commissionnaire Brousseau, credible. With the exception of Corporal Azpiroz, who had a common-law relationship with Private Doling, they were all individuals who, if they dealt with Private Doling at all, did so on a professional basis. They were straightforward in their testimony and displayed no animus against Private Doling or in favour of the Crown. They were logical and unshaken in their testimony. Although clearly the military police members who investigated the incident quickly developed a perspective about the incident, this was based on photographic and documentary evidence and reasonable re-enactments. Much of the testimony of the military police also consisted of tapes of phone calls and interviews. The court would comment that the quality of these tapes could have been better. It was necessary to listen to them several times and indeed the transcripts of the taped interviews, in and of themselves, were not always reliable. Nevertheless, the recordings substantiate the military police's professional approach in this matter and at least until the 6th of April 2004 interview, that they had a supportive approach in dealing directly with Private Doling, even though, in the evidence before the court, by the 16th of March 2004, they had already decided that her complaint would be investigated as a public mischief complaint.

[14] Let me then go through in chronological order the matters that the court considers are uncontested. The first is that Private Doling was raised in Eastern Ontario and still lives in that area as does her family and apparently her in-laws. She was married to James Doling who lives in Stirling, Ontario, a small town, North and East of Belleville. She and James Doling separated sometime prior to the spring of 2003. At some point in time, then Ms Doling, began working as a cleaner at Canadian Forces Base Trenton. In the spring of 2003, Ms Doling, as she then was, began living with Corporal Azpiroz at Canadian Forces Base Trenton. At that time she was 30 or 31 years old. Miss Doling applied to join the Canadian Forces in 2003, was accepted and began her training as a private at CFB Saint-Jean, Québec, at the large building known as the Megaplex in early January 2004. By the second week of that course, she already had some medical problems and she had fallen behind in that she failed to pass her physical fitness test. Her overall performance was assessed as low. By the beginning of February 2004, Private Doling was telling some people in her platoon that one of her sons had been in an accident and was in a coma in a hospital in Toronto. The platoon authorities questioned her about this and asked if she needed compassionate leave to deal with the issue. Private Doling declined the offer to see the padre and get compassionate leave. It is apparent that if she had taken four or five days compassionate leave then she would have had to transfer from her course to the Persons Awaiting Training, PAT platoon, and been re-coursed. By week seven of her basic course,

around the middle of February of 2004, Private Doling had failed her physical fitness retest, her weapons handling test and her drill test. She was re-coursed. Private Doling was transferred to the PAT Platoon and sent to see a padre in regard to her son being in a coma in a hospital in Toronto.

[15] Private Doling obtained a leave pass from the padre; that is, a weeks' leave to allow her to go and deal with this matter. It is also now uncontested that Private Doling's son had not been in an accident, nor was he in a hospital in Toronto, nor was he in a coma at that time. Private Doling, during the period of her compassionate leave, went to CFB Trenton, to her and Corporal Azpiroz' residence where she spent a total of nine days. At the end of her compassionate leave, Private Doling returned to Canadian Forces Base Saint-Jean driving one of Corporal Azpiroz' cars that he had lent her. She returned to Canadian Forces Base Saint-Jean on a Sunday evening and the following day, Monday the 1st of March 2004, she was interviewed by another padre. Private Doling explained to him she needed some more compassionate leave to deal with some outstanding issues relating to her son, in a coma, in hospital, in Toronto. Padre Lussier made some inquiries and discovered that her son was not in hospital in Toronto and there was no record of him being there. Padre Lussier had two meetings with Private Doling that day, the 1st of March 2004, the last one finishing about 1630 hours. During the second meeting, Private Doling called her common-law spouse to make inquiries about the non-existent accident, the hospital-stay and the coma. Padre Lussier expressed suspicion about the situation that Private Doling had explained to him. He did not give her anymore compassionate leave and gave her until first thing the following morning to provide him with more information about the situation. On that same day, Private Doling told a PAT platoon member that her son was still in a coma, that she had not been given leave by the padre that she had seen and that she had to leave. At 1945 hours on the 1st of March 2004, Private Doling withdrew \$400 from a bank machine inside the Megaplex. At 20:06, Corporal Azpiroz' car was photographed leaving the main Grand Bernier gate at Canadian Forces Base Saint-Jean, as subsequent tests showed a one minute discrepancy between the timer on the bank machine and the camera on the gate, the total time expired between these two actions was 22 minutes. As a result of a telephone call from Corporal Azpiroz to Canadian Forces Base Saint-Jean looking for Private Doling, as he had not heard from her, that he made on Friday, the 5th of March 2004, authorities at Canadian Forces Base Saint-Jean noticed that Private Doling was absent without leave. Their reaction was to wait until the following Monday, the 8th of March to see if she would turn up rather than fill in the paperwork on that Friday. On Monday the 8th of March 2004, Corporal Azpiroz phoned the military police at Canadian Forces Base Trenton to report Private Doling as a missing person. Master Corporal Parsons, a military police member at Canadian Forces Base Trenton contacted Private Doling's father-in-law in Stirling later that day to make inquiries about Private Doling. At about 11:20 on that Monday evening; that is, the 8th of March 2004, Private Doling called Master Corporal Parsons. The main purpose of the call seems from its contents to be for Private Doling to advise the MPs that she was well, was not

prepared to return to the Canadian Forces and Canadian Forces Base Saint-Jean, and that she wanted Corporal Azpiroz to stop phoning members of her extended family. During that call, she also reported that she had been sexually assaulted on the evening that she had left Saint-Jean outside the Megaplex in a smoking area. On the 9th of March at approximately 2:30; that is, 2:30 a.m. Private Doling again called Master Corporal Parsons to ask for a ride from her ex-husband's residence in Stirling to a woman's shelter in Napanee.

[16] Master Corporal Parsons drove from Trenton to Stirling and took Private Doling to the shelter in Napanee. The evening of the following day, Wednesday the 10th of March 2004, Private Doling was interviewed by Sergeant Bolduc and Master Corporal Decoeur for approximately three and a half hours. Although during the beginning of the interview Private Doling was reluctant to provide many details, after a supportive and encouraging talk by Master-Corporal Decoeur, she provided some very specific details. In fact, that interview reveals four accounts of an incident on the 1st of March 2004 which varied rather significantly in their details. On the 11th of March 2004, Private Doling's combat clothing which she identified as the clothing she was wearing on the 1st of March 2004, are picked up from her ex-husband's residence in Stirling. Ultimately no DNA analysis is done of these garments. Concurrently Private Doling is subjected to a medical exam at a hospital in Napanee where there are references to various physical difficulties, one is a tenderness around the collarbone and the second is some bruising on the top of her feet. Effective the 11th of March 2004, Private Doling is also on sick leave placed there by the medical authorities at CFB Kingston until the 22nd of March 2004.

[17] On the 11th of March 2004, Petty Officer 1st Class Carbonneau and Sergeant Lavoie also become actively involved in the investigation. On the 12th of March, Commissionaire Brousseau, on a request from Sergeant Lavoie, checks the cameras for the exit gate Grand Bernier in Saint-Jean for the period 1800 to 2300. On the 13th of March 2004, he identified a vehicle leaving the base at 20:06 as one of interest to Sergeant Lavoie. After considering the time lines that had been presented in Private Doling's statements, after reviewing her 11th of March interview with Sergeant Bolduc and Master Corporal Decoeur and after interviewing some witnesses at CFB Saint-Jean, by Tuesday the 16th of March 2004, the two principal investigators, Petty Officer 1st Class Carbonneau and Sergeant Lavoie were of the view that no sexual assault had happened, that Private Doling had made the story up to explain her absence without leave. Indeed, Sergeant Lavoie indicated in his testimony that he first had some doubts about the account on the 12th of March when he received the information from Commissionaire Brousseau about the time of the departure of the vehicle. On the 16th of March, the whole tenor of the investigation now changed to one of an investigation into public mischief. According to Sergeant Lavoie, the 18 March re-enactment of Private Doling's actions, given the time line she has provided, was to disprove that a sexual assault could have occurred. After the 16th of March 2004, the investigation into Private Doling's sexual assault allegation, as indicated, turned into a public mischief

investigation. On the testimony before the court, all the investigative steps after that date, such as visiting Corporal Azpiroz in Trenton, were in furtherance of the public mischief investigation, not the sexual assault investigation.

[18] On the 22nd and 23rd of March 2004, Private Doling returned to Canadian Forces Base Saint-Jean and was provided with special accommodation and support there in accordance with medical recommendations from Kingston. From the 24th to the 28th of March 2004, Private Doling was on sick leave. Since the 28th of March 2004, she had been at Kingston working part-time at the recruiting centre.

[19] On the 6th of April 2004, Private Doling was interviewed by Petty Officer 1st Class Carbonneau under caution. That interview lasted approximately three and a half hours. After being confronted with the results of his and Sergeant Lavoie's investigation, Private Doling said she was not sexually assaulted in March 2004; that is, on 1 March 2004, at a smoking area outside the door of the Megaplex, but rather during a weekend pass spent at a Holiday Inn. This incident, she reported to have occurred perhaps a week and a half before she went back to Trenton on the 20th of February 2004. Private Doling said in the interview that she lied about the 1st of March 2004 sexual assault because she was scared. She needed to get out of the Megaplex and because she did not want to go back to Saint-Jean and that if she had to go back to Saint-Jean she would shoot herself. The investigation launched in March into the sexual assault allegation, which turned into a public mischief investigation appears to have terminated on the 6th of April 2004 and no investigative steps were undertaken to look into the Holiday Inn allegation.

[20] I will now briefly review the submissions of the prosecution and the defence in this matter. The prosecution made an opening statement which was in many ways similar to the closing statement. The prosecution reviewed the facts as testified to by the witnesses called by the prosecution and argued that the prosecution's witnesses established all the essential elements of both offences beyond a reasonable doubt. In particular, the prosecution submitted that the audiotape of the 8th of March conversation and the 9th of March conversation, reported by Master Corporal Parsons as occurring in a car while driving to Napanee, established that Master Corporal Parsons made it clear to Private Doling at that time that he was taking steps to investigate the offence of sexual assault had been reported to him by Private Doling. The prosecution argued that the first offence was effectively completed in the 8th to 9th of March time frame, but subsequent actions up to the 6th of April taken by Private Doling in essence continued the offence. The prosecution submitted that the best evidence that the offences that Private Doling reported did not occur is Private Doling's admission on the 6th of April 2004, that she lied about the sexual assault. This admission, the prosecution argues, is substantiated circumstantially by the testimony of Petty Officer 1st Class Carbonneau and Sergeant Lavoie and their re-enactment. The prosecutor argued that many internal contradictions in Private Doling's various accounts of what happened made her

not a credible witness. The prosecutor highlighted a number of areas, in particular, the contradictions with regard to Private Doling's account of her relationship with Corporal Azpiroz; the contradictions on how the assault took place; and also, the contradictions with regard to her experiences during the early stages of her course at CFB Saint-Jean. In addition, the prosecutor submitted that Private Doling was not a credible witness because on a number of issues, including her fear of the military police at CFB Saint-Jean and the theft of the green wallet, that her testimony was simply not rational.

[21] The prosecution submitted that this is simply a case of Private Doling making up a story to protect herself from the consequences of her absence without leave and to benefit from the advantages of the status of victim. The prosecution's position in regard to the second charge is that during the 10th of March interview with Private Doling by Sergeant Bolduc and Master Corporal Decoeur, Private Doling reports the theft of various items to explain her actions. This report, according to the prosecution, results in the military police conducting a further investigation into this alleged theft. The prosecution argued that Doctor Mauri's testimony should be given very little weight by the court because its factual basis was exclusively from Private Doling and also that Doctor Mauri could not be considered an impartial witness because of her requirement, from a therapeutic perspective, to believe Private Doling as part of their ongoing medical relationship.

[22] The defence puts forward two main defences. Firstly, the defence argued that the prosecution had failed to prove beyond a reasonable doubt that the report of a sexual assault was false; that is, that the report made on 8 March 2004 to Master Corporal Parsons related to an incident that did not occur. Defence submitted that the support for that is Private Doling's testimony before the court that she was a victim of a sexual assault on the 1st of March 2004; the medical evidence of injuries that was found during the exam that took place on the 12th of March, found at Exhibit 13; and the testimony of Doctor Mauri, that Private Doling displayed PTSD, Post Traumatic Stress Disorder symptoms, such as flashbacks, consistent with being the victim of a sexual assault. In addition, the defence submitted that given Private Doling's distressed state of mind on the 8th of March 2004, she had no intention to mislead Master Corporal Parsons. The defence argues that the 10th of March and the 6th of April 2004 interviews which are filled with inconsistencies and illogical trains of thought are evidence of the serious psychological issues Private Doling was dealing with and demonstrated the memory loss problems that Doctor Mauri had subsequently diagnosed and indicated were typical of a Post Traumatic Stress Disorder victim. That is the second main defence as put forward by the defence counsel was that Private Doling lacked the necessary mens rea to commit these offences.

[23] In relation to the second charge, the defence again argued that the evidence presented by the prosecution did not establish beyond a reasonable doubt that the offence of theft had not occurred. But even if the court was satisfied that that had been established,

Private Doling must be seen as subject to wrong perceptions and not trying or intending to mislead the military police investigators. In essence the defence in the context of mens rea, argued that Private Doling had an honest but mistaken belief that these offences had been committed. He also stressed a reasonable doubt must be resolved in favour of Private Doling.

[24] As the court has indicated earlier, there are many uncontested issues in this case. Equally there are some much narrower but significantly disputed matters. In regard to those matters they are specifically: Was Private Doling sexually assaulted on 1 March 2004 in Saint-Jean and were personal items, including a photo of her children stolen from her room at Canadian Forces Base Saint-Jean some time between 20 and 29 February 2004? In that regard, the court must consider the account provided by Private Doling. As set out in *R. v. W.(D.)*, if Private Doling is believed, then the court must find her not guilty. If she is not believed but if her testimony raises reasonable doubt, then again, the court must find her not guilty. Private Doling has provided at least four accounts of what occurred during the sexual assault and three accounts of what occurred in relation to the theft of items. Those accounts are the 8th of March conversation with Master Corporal Parsons; the 10th of March 2004 statement to Sergeant Bolduc and Master Corporal Decoeur; the 6th of April statement to Petty Officer 1st Class Carbonneau and the May 2005 testimony before the court. The accounts provided are inconsistent within themselves, inconsistent with each other and contradicted by the documentary photographic and physical re-enactment evidence. There are so many contradictions it is difficult to reduce them to a few but it is necessary to show clearly why the court does not consider Private Doling's account credible or reliable.

[25] So let me begin with the details of the sexual assault. In the 8th of March 2004 conversation with Master Corporal Parsons, Private Doling explains that the assault occurred after she had gone to the bank machine in a smoking area in the blue sector of CFB Saint-Jean. There she was grabbed from behind, she did not see the person's face, but she saw that he was a guy wearing a green-student-combats. She described what happened as, "He had his way with me." She says that he turned her onto her stomach and that her face was smothering in snow. After the incident she saw a girl who asked her if she was alright, she ran to her room, she got her keys, she fled Saint-Jean, and her concern was that she did not want to get pregnant.

(26) The accounts that she provided on the 10th of March to Sergeant Bolduc and Master Corporal Decoeur consist of four varying accounts. The first account that she provides to Sergeant Bolduc is that she thinks that her attacker broke her collarbone; that this attack occurred after she had gone to the bank machine and went to a smoking area; that she was sitting there, enjoying a cigarette, when she was pushed to the ground; then the person grabbed her face and put it into snow and mud; that the person then grabbed her belt, undid it, pulled down her pants, did his thing, and left; that Private Doling herself was pulling her

head up and trying to yell, "No, stop."; and that the attacker said, "Shut the fuck up, bitch." and put her head down again; that the attacker had a wedding ring; that he was wearing a recruit's jacket; Private Doling stated that she did not know if she ran upstairs but that she thinks she must have, she took her underwear and stuff and threw it into the garbage; that she ran downstairs; that she had gotten into her car and she subsequently added that, from her perspective, her attacker had a French accent.

[27] Very shortly thereafter, when asked to go through what happened again, Private Doling gave a second version that was different both in terms of the order of events and the details. This leads to Master Corporal Decoeur coming to her room; that is, the room that she is being interviewed in by Sergeant Bolduc and having a conversation with her. In essence, in that conversation Master Corporal Decoeur, while sympathetic indicates he does not believe Private Doling is being truthful. In addition, Sergeant Bolduc tells Private Doling that she believes that Private Doling is holding something back, something back that she does not want to report and Private Doling, after some reluctance, reports the theft of her military ID card, her Red Cross papers, her children's information, her children's pictures and her common law papers. Her conclusion from all of this is that the attacker knew who she was. She then provides a third version of what happened in which the attacker mentioned her name; that is, Angie. Again, after questioning and in the same interview she provides a fourth and more detailed version of what happened in which the attacker mentions her children and that he will know if she tells the military police. So by the 10th of March there are in essence five versions of what happened on the 1st of March 2004.

[28] On the 6th of April 2004, after being cautioned that the military police suspected she had lied about the sexual assault, Private Doling goes through again and explains what happened at the beginning of the interview with Petty Officer 1st Class Carbonneau. She says she got money from the bank machine. She then went to Canex for about five minutes, then had a smoke. She then put her money away upstairs. She then came downstairs for another smoke. She then saw a boot, salt-stained, at the door and this was when she was attacked. She then goes back upstairs, she washes her face, she gets her keys and wallet, she then strips down and has a shower. She then throws on her clothes again and runs back down to the same exit; that is, the same exit that she's been attacked at. She checks that there's no one there and then she goes out. She sees a man with a dog. She's scared and she runs to her car and unlocks it. She sits in it for a minute crying, the man with the dog walks by, she's afraid that he may be a military policeman who's come to arrest her for something, and then she drives away quickly.

[29] After this account is provided, Private Doling is confronted by Petty Officer 1st Class Carbonneau who says, it cannot have happened this way and this is the information we have as to why it didn't happen that way. At that time Private Doling says, I lied, and I lied because you would not have believed what really happened. She confirms she was not

assaulted at that place, in that way or on that date. She also indicates that someone had told Mike; that is, Corporal Azpiroz, about something that had occurred about a week and a half before; that is, a week and a half before she had left for Trenton in early February, and she mentions at this time an attack during a pass; that is, a time she was allowed to be away from Canadian Forces Base Saint-Jean, that occurred at a Holiday Inn, and she says very clearly that she knows she had intercourse during that event. So, at the end of the 6th of April 2004 interview, the account—the most recent account provided by Private Doling was that the event of the 1st of March 2004, did not take place. Rather there was an earlier attack at an Holiday Inn in February of 2004, where she knows that she has been assaulted because she knows that she had intercourse. Interestingly, in the testimony of Doctor Mauri, this Holiday Inn assault is not something that Doctor Mauri indicates that she is aware of. In her direct testimony before the court Private Doling indicates she does not remember the details of the assault. She still maintains that she was assaulted and that it was at the Mega, but she says in circumstances that, "I do not remember." In cross-examination by the prosecution, Private Doling takes the position that both incidents occurred but that now she is not sure whether or not she was actually assaulted at the Holiday Inn. The issue of the assault is not the only matter where Private Doling has provided conflicting accounts. There are conflicting accounts throughout the various interviews and during the testimony of Private Doling on a number of matters and the court has merely selected a few of them to highlight the reasons why the court cannot find Private Doling credible.

[30] In the 10th of March interview, Private Doling says that Corporal Azpiroz picked her up on the 20th of February with his vehicle. In the 6th of April interview, she says that she had her car with her on the 20th of February. In the 8th of March interview, she says that she does not care what happens to her stuff at Mike's, that they can hold a garage sale. On the 10th of March interview, she says she needed to go back the week of the 1st of March to pick up her stuff from Corporal Azpiroz and that's why she went AWOL. On the 6th of April in the interview with Petty Officer 1st Class Carbonneau, Private Doling indicates that in fact she had put a lot of stuff in boxes during the week that she had been back with Corporal Azpiroz; that is, the week of the 20th to the 28th of February. In cross-examination for the court, Private Doling indicated that she had taken everything she wanted from Corporal Azpiroz' house and brought it back with her to CFB Saint-Jean. In the interview of the 8th of March when talking about Corporal Azpiroz, Private Doling says, "Mike won't want me when he knows" and also makes a point that she wants the military police to have him stop calling because he's making her angry. In the 10th of March interview, she indicates that she is scared of Corporal Azpiroz and she wants to get away from him. In the 6th of April interview, Private Doling says that Mike; that is, Corporal Azpiroz, spoke to her on the 29th of February and wanted her to leave him. And there is no connection made by Private Doling but there is of course the mention both in the 6 of April interview, at another point in time and in the 8th of March phone call that for some reason Corporal Azpiroz would not want her anymore and this seems to be tied to the fact of knowing about the incident at the

Holiday Inn in Private Doling's mind.

[31] In the 6th of April interview, Private Doling says very clearly that her collarbone was broken at the beginning of the course. In cross-examination, she says equally clearly that it was not broken and she never says that it was. In the 8 of March interview, she says that she was happy on basic training until the 1st of March when the sexual assault occurred. In the 10th of March interview, she says she was not stressed on basic training. In the 6 of April interview she says she was not stressed on basic training. In cross-examination, she says that she was harassed and she was scared on basic training from the very first weeks. In direct, she indicates—that is, in direct examination, while testifying for the court—that she was unhappy after her first couple of weeks on basic training, but she did not know why, but that she genuinely enjoyed the course and she liked learning and cleaning and helping people with their kit. In cross-examination, she's indicated that she didn't know why she was unhappy, that threatening letters had been left under her pillow and that she was feeling suicidal. And she also said in cross-examination that she found helping people with kit very stressful because she might do something wrong.

[32] Very simply, Private Doling seems incapable of a consistent account on almost any subject that she has spoken about. It seems on occasion, when confronted with a fact such as she lied about her son being in an accident and in coma, she accepts that. But she then goes on to explain that it was necessary for her to lie because she felt she had to get away and this was the only way she could get away. The court has considered very carefully whether or not the medical evidence that was presented; that is, the sensitive collarbone and the bruises on her feet that were observed at the hospital in Napanee, could work to confirm and enhance the credibility of Private Doling's testimony and the court concludes that they cannot. The collarbone injury is consistent with the earlier confirmed injury and the bruises are consistent with any number of things; that is, the source is unknown. Most importantly from the court's point of view as it indicated earlier is that the accounts, whichever version that is referred to, that relate to the 1st of March 2004 are inconsistent with the time frame as set out. That is the removal of money from the bank and the departure of Private Doling from CFB Saint-Jean. In essence, the only way to accept Private Doling's account is to give up logic and reason. So the court concludes that Private Doling's account is not one that it can believe and because of the inconsistencies and the contradictions, it is not one that raises a reasonable doubt about the other evidence.

[33] The court however now goes on to the next step, which is to look at all the evidence and it will start with the second charge. In the second charge, the court accepts that a report was made of a theft to Sergeant Bolduc and Master Corporal Decoeur on the 10th of March and this was done in the context of their sexual assault interview with Private Doling. The evidence before the court is that there is, in fact, only one ongoing investigation; that is, an investigation into the sexual assault that Private Doling alleges, which turns into a public

mischievous for false sexual assault allegations effectively on the 16th of March 2004. There is nothing before the court that indicates there was any separate investigation into the theft issue. Nor that the steps taken to look into the theft issue continued the sexual assault investigation itself beyond that which it would have continued to, given the initial allegations made by Private Doling. There were some steps taken to investigate the theft, but this was always done in the overall context of the sexual assault investigation and the investigation of the theft does not continue after the sexual assault investigation is terminated, effectively on the 6th of April 2004. Therefore the court finds the prosecution has not established beyond a reasonable doubt the actus reus; that is, that what Private Doling told Master Corporal Decoeur and Sergeant Bolduc caused them to enter upon or continue an investigation.

[34] In relation to charge number one, the court does accept that the prosecution has made out the actus reus; that is, that Private Doling did report a sexual assault occurred to Corporal Parsons and that that sexual assault had not been committed. The court would indicate however that in relation to the time frame, as it has already mentioned, it is clear that after the 16th of March 2004, that no action was taken to investigate the sexual assault and therefore this was not something that continued until the 6th of April 2004. The critical issue from the point of view of the court is what was Private Doling's mental state; that is, her mens rea at this time; that is, in the time frame of the 8th of March to the 16th of March 2004 and very specifically, did she make the statement to Corporal Parsons with intent to mislead. In that regard the court has considered carefully the testimony of Doctor Mauri. Doctor Mauri was the only expert who was called to testify before the court and she was not challenged on her general evaluation of Private Doling's psychological problems other than the post traumatic stress disorder diagnosis that she believes or has assessed was caused as a result of a sexual assault in Saint-Jean.

[35] The testimony of Doctor Mauri is that she has been treating Private Doling since the late summer of 2004; that is, her treatment began approximately four months or more after the sexual assault that is alleged to have occurred on the 1st of March 2004. Doctor Mauri indicates very clearly that her role as a professional psychologist and as a therapist treating Private Doling is one that is quite different from the court. She is not there to judge her client or to challenge the truth of anything that Private Doling tells her. Doctor Mauri's psychological assessment is that Private Doling suffers from PTSD which she attributes to a sexual assault and by "she" I mean both Private Doling and Doctor Mauri who has been advised of the sexual assault by Private Doling. That Private Doling has a number of personality disorders. These include avoidant personality disorder; borderline personality disorder which is often present in people who have been abused as a child and is demonstrated by that individual being impulsive, the individual possibly being suicidal, the individual acting out which Doctor Mauri explained was, in essence, acting without thinking and that Doctor Mauri described as a nightmare for a clinician. Private Doling, also from her perspective, was diagnosed as schizoid and being dissociative which is forgetting matters

outside the normal range. In fact, Doctor Mauri's testimony is that Private Doling is assessed by her as pathologically dissociative and that dissociation affects her perception and renders her not necessarily able to think or reason or feel all at the same time particularly in stressful situations. As the court indicated, the PTSD is attributed by Doctor Mauri to a sexual assault incident; that is, the incident on the 1st of March because, as mentioned earlier, Doctor Mauri has no knowledge of the other Holiday Inn incident. Doctor Mauri however indicated that PTSD could be attributed or caused by a significant group of stressors. However, her dealings with Private Doling was such that she worked on the premise that the Saint-Jean sexual assault was the trigger for the PTSD.

[36] Doctor Mauri was asked how a person in a dissociative state might act and might react and she indicated that a person in a dissociative state might change significant details or recant statements made about incidents. She indicated it was difficult to distinguish sometimes someone who was malingering from someone who was dissociative, they both could be vague and evasive. She also spoke about something called a fictitious disorder; that is, someone who really believes something happened and displays the symptoms for that although the incident really didn't happen and she describes that individual as not per se lying. Apparently treatment does not change, from a medical perspective, whether or not a diagnosis is for a real or a fictitious disorder; that is, the treatment remains essentially the same.

[37] The court found that Doctor Mauri was a credible witness but that the only deficiency that existed was the source of her information; that is, it was clear in all matters that she relied entirely on Private Doling as her source of information and this is something the court has to take into account when assessing the weight of Doctor Mauri's testimony. Doctor Mauri dealt with Private Doling in a supportive relationship, as she indicated, up until the time of her testimony for about 60 to 80 hours. As I've indicated in the Post Traumatic Stress Disorder, her assessment was relying on Private Doling's testimony or statement to her of what happened. She indicated that even if this was something that hadn't happened then, as I've indicated earlier, if the person was suffering from a fictitious disorder then the symptoms would be the same and the treatment would, in essence, be the same.

[38] The testimony of Doctor Mauri is critical on the issue of mens rea and the court returns to the obligation on the prosecution to prove mens rea beyond a reasonable doubt. In this particular case, prosecution has to establish that Private Doling made the allegations; that is in this case, the allegation in the first charge, with intent to mislead the military police. It is not enough for the prosecution to establish this is more likely than not or a reasonable situation but the prosecution must establish it beyond a reasonable doubt. The court, as is indicated, is convinced on the evidence before it that the sexual assault on the 1st of March 2004 did not occur. The question that the court now has to deal with is when Private Doling reported this on the 8th of March 2004, did she at that time know what she

was saying was not true and did she make the report with the intent to mislead. The court has taken into account that Private Doling has a history of lying for her own benefit and in the absence of the testimony of Doctor Mauri, the court would be in a position to very easily conclude that that's exactly what happened in this case as well. Equally, the court can conclude that Private Doling is in essence a very transparent liar; that is, even when she tells something, such as her son being in a coma, it is something that is relatively easy to disprove. In addition, as the court has indicated, Private Doling can barely keep her story straight from hour to hour, let alone from day to day. She has and this would appear to be part of the dissociative state that Doctor Mauri described, a pronounced capability to ignore reality if it is something that she does not want to see. And the court would go back to some of her testimony to review this. Her own description of herself was that before she joined the Canadian Forces she was normal but at the same time her descriptions are that she came from a dysfunctional family where her father drank and used drugs, where she was abused and where she was suicidal. In terms of Corporal Azpiroz, some point in time he is described as oppressing her, at other points in time she indicates concern he would continue to want her and even while he is oppressing her, she is visiting him.

[39] Perhaps most interestingly is the issue of the green wallet. Private Doling explained in terms of the items that were stolen from her how her military ID or the card that she thought was being referred to as her military ID, was in a green wallet that had been stolen. When the prosecutor pointed out to her that in the 10th of March 2004 interview that had been videoed, she actually had her green wallet with her and opened it, Private Doling went off and started talking about various other matters never getting back to addressing the issue of the green wallet; that is in essence, at that end of it she simply ignored the fact that is was there.

[40] The court has also been very cognizant of the fact that it is seeing Private Doling in the spring of 2005 and that the Private Doling that appears in the courtroom appears a much less capable individual than the Private Doling in the interviews; that is, Private Doling's capacities in some areas seemed to have declined dramatically. It is not clear why this has happened. She has been removed from the pressures of Saint-Jean. Her sexual assault allegation has resulted in sympathetic and supportive medical treatment and she seems to be currently engaged in a relatively well paying job which she works at part-time. In the 2004 interviews, she is much more coherent and organized in her thoughts and more competent. The court would indicate that it is clear that she now appears to believe that the sexual assault happened, but that is not the question. The question before the court is, did she believe that in March, more specifically—that is March 2004, more specifically, has the prosecution convinced the court beyond a reasonable doubt that subjectively Private Doling, in March 2004, knew that she had not been sexually assaulted on the 1st of March. The prosecution submits the most persuasive evidence is Private Doling's own declaration on the 6th of April 2004, in her interview that she lied about being sexually assaulted to justify not

going back to the Megaplex in Saint-Jean. In short, the prosecution argues the most persuasive evidence is a statement from Private Doling. The question that the court has had to deal with is why would that statement be any more reliable than any other statement made by Private Doling. It is clearly subject to the same deficiencies as her other statements; that is, the recantation is no more reliable than the rest of her testimony particularly in light of Doctor Mauri's testimony that dissociating persons may well recant if they are avoiding or dissociating.

[41] The court has considered whether Private Doling; that is, someone in her position in March 2004, might reasonably be expected to intend the natural consequences of her actions. Again, Doctor Mauri's testimony is that Private Doling in stressful situations does not always act rationally but rather impulsively. What is the impact of Private Doling's ongoing psychological problems and the court accepts they are ongoing; that is, her avoidant personality disorder, her borderline personality disorder and her pathological dissociation, on her intent to mislead.

[42] The court has reviewed very carefully again the interviews of the 8th of March and the 10th of March and there is certainly a pattern there. First of all, Private Doling indicates she does not remember details. Then it is suggested to her, very sympathetically in both of the interviews, that remembering details might help resolve this outstanding AWOL issue that she has. She is encouraged to make further statements by both Master Corporal Parsons and Sergeant Bolduc and Master Corporal Decoeur. Private Doling repeats in both interviews in essence that the police can do what they want. It is clear that she responds to the stimuli; that is, the support and warmth and being told it's not her fault, whatever she has done, she's now a victim. Inadvertently, the military police are pushing all the right buttons for Private Doling. Private Doling, perhaps equally, is pressing all the right buttons for the military police by being the victim of a sexual assault; that is, someone that they are going to treat with special care and special caution. However, Private Doling has vulnerabilities. As indicated by Doctor Mauri, she is avoidant and she dissociates and in particular with the dissociation the court takes into account she does not hear necessarily what is said, only what she wants to hear.

[43] The court agrees with an assessment made by Sergeant Lavoie in which he rightly identifies a problem immediately he sees the 11th of March interview with Private Doling; that is, a problem as to whether or not she can be believed. In the absence of the testimony of Doctor Mauri, the court would conclude that Private Doling is, as indicated by the prosecution, simply consciously lying to protect herself from the consequences of her absence without leave. However, having reviewed the testimony of Doctor Mauri and having accepted that Private Doling's problems are of longstanding, the court is not satisfied beyond a reasonable doubt that Private Doling, when she made the reports on the 8th and 10th of March about the sexual assault, did that with an intention to mislead.

[44] Please stand Private Doling. Private Doling, the court finds you not guilty of the first charge and the court finds you not guilty of the second charge. Please be seated.

COLONEL K.S. CARTER, CM.J.

Counsel:

Major M. Trudel, Regional Military Prosecutor, Eastern Region
Attorney for Her Majesty The Queen
Major L. Boutin, Directorate of Defence Counsel Services
Attorney for Private A.G. Doling