

**Citation:** *R. v. Corporal R.D. Parsons*, 2006cm3003

**Docket:** 200516

**STANDING COURT MARTIAL  
CANADA  
NOVA SCOTIA  
CANADIAN FORCES BASE GREENWOOD**

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**Date:** 3 February 2006

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

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**HER MAJESTY THE QUEEN**

**v.**

**CORPORAL R.D. PARSONS**

**(Accused)**

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**FINDING**

**(Rendered orally)**

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[1] Corporal Parsons, this court finds you not guilty of the first charge and guilty of the second charge. You may resume your seat beside your counsel.

[2] Corporal Parsons is charged with two offences. A charge of stealing while entrusted contrary to section 114 of the *National Defence Act*, and a second charge of conduct to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act*; that is to say, unauthorized possession of public property.

[3] On a further three charges contained in the charge sheet, Corporal Parsons was found to be not guilty at the close of the case for the prosecution.

[4] In brief, the circumstances of the case disclosed that on February 4, 2004, while executing a search warrant issued under the *Criminal Code*, the military police discovered a Nikon D1X digital camera and related paraphernalia in the residence of Corporal Parsons. The camera had been ordered by and supplied to the Department of National Defence and shipped to the base supply at Canadian Forces Base Greenwood in late June of 2003. At that time, Corporal Parsons was employed as a supply technician.

[5] On the evidence, Corporal Parsons was the last person to be seen in possession of the camera on or about July of 2003; that is to say, some time in July of 2003, when the camera went missing.

[6] 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.

[7] 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.

[8] In this case, the defence does not challenge the credibility of the witnesses who gave evidence for the prosecution. But nevertheless, the responsibility rests with the court to assess the honesty and the reliability of all the witnesses who testified. In making this assessment, the court may accept all of what a witness says as 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.

[9] In this case, the accused, Corporal Parsons, gave evidence in his own defence. The law provides that 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.

[10] Corporal Parsons testified and denied that he stole the Nikon camera. He admitted that he handled the camera as part of his duties when it arrived at his workplace. He examined the contents of the boxes in which the items were packaged, made entries into the computer system that tracks these items while they are in the supply chain, and secured the items for a short period of time in a padlocked compartment. Later, he retrieved the camera equipment from the compartment and asked a co-worker to watch him as he loaded the camera, packaged in a large box with bubble wrap and together with other items to be transported by truck elsewhere on the base.

[11] He testified that he has a personal interest in photography and usually buys camera and photographic equipment at flea markets, pawn shops, and other outlets for used equipment. He met members of the Canadian Forces who were imaging technicians and discussed with them the nature of their work as he was considering remustering to the trade of imaging technician. In particular, in a conversation I find to have been held in July of 2003, the accused stated that he had dealt with a digital camera but days earlier and knew how to find one in the supply system by virtue of the knowledge he gained from his employment.

[12] Corporal Parsons testified that he decided to buy a Nikon D1X digital camera after doing some research on the Internet. He had been told that the Nikon D1X would be a good camera to have if he was going to remuster as an image technician. He spent some time accumulating cash to the amount of 4,000 to 4500 dollars and in late November or early December of 2003, he went to a camera equipment outlet in Halifax called "Carsand-Mosher". There, he asked about the D1X and was told that he could get one for a price of \$4,000 plus taxes, but from another Carsand-Mosher outlet elsewhere in the Maritimes.

[13] Corporal Parsons said he would think about it. He further testified that he met an individual in the Carsand-Mosher shop who was trying to sell camera equipment to Carsand-Mosher, as he was apparently getting out of the business of selling camera equipment. Carsand-Mosher declined to buy the equipment as Corporal Parsons understood their policy to be not to buy used equipment outright but only to accept used equipment as part of a trade up.

[14] Corporal Parsons claims he struck up a conversation with this previously unknown individual who offered to sell him a Nikon D1X camera he had in his vehicle in the parking lot. Corporal Parsons noted the word "photography" on the side panels of the vehicle, and the vehicle contained a lot of camera equipment.

[15] Corporal Parsons testified that the individual seemed to him to be a legitimate businessman. They negotiated and settled on a price of \$3800 for the camera and related equipment. At the request of Corporal Parsons, the seller wrote out and

signed a hand-written receipt, which Corporal Parsons identified in court, and which was marked as Exhibit 11.

[16] Dealing with the first charge of stealing, the prosecutor points to an incriminating web of circumstances and submits that the court should conclude that the accused is the thief. In particular, I note that the accused admitted to a motive to steal the camera and had the opportunity to do so by reason of his employment circumstances and, it should be noted, because of what seemed to be insufficient controls over the handling of expensive and attractive items in the supply system, at least at the time of the theft of the camera. In addition, the accused was the last person seen to be dealing with the camera until it was discovered some months later in his residence.

[17] I was asked by the defence at the conclusion of the case for the prosecution to find that the evidence did not establish a *prima facie* case for a finding of guilty. I ruled against the motion at that time holding that a reasonable jury, properly instructed, could find the accused guilty of the offences of stealing and improper possession of public property. However, the burden upon the prosecution at this point in the trial is higher. With respect to the charge of stealing, as I stated above, the burden upon the prosecution at this stage is to establish that, in fact, the accused was the thief, and to establish this fact beyond a reasonable doubt.

[18] There is no doubt that in many cases, the prosecution can establish guilt on the basis of what is sometimes called "circumstantial evidence". In such cases, the court must be careful in dealing with the evidence because of two possible sources of error. First, the underlying facts or circumstances must be established to the satisfaction of the court. And secondly, the inference of guilt that the court is asked to draw from the established facts must be such as to exclude any other innocent explanation that the underlying facts could support.

[19] Based upon all the evidence I have heard, I am satisfied as to the existence of the underlying facts relied upon by the prosecution. But especially having regard for the lax security measures in effect for dealing with attractive items in the supply chain, I am not satisfied that I can safely infer from this evidence that the accused is the thief. That doubt is to be resolved in favour of the accused and he is, therefore, not guilty of the charge of stealing.

[20] The second charge is one of conduct to the prejudice of good order and discipline, in that he had unauthorized possession of the Nikon camera. There is no issue in this case that Corporal Parsons did not have proper authorization to possess the Nikon camera at the time, as it was the property of the Department of National Defence, and he took no steps to fill out a temporary loan card for this item. But was he in possession of the camera? The camera was, indeed, in the physical possession of Corporal Parsons on 4 February 2004, in that he had it in his residence. But possession,

in law, requires that the evidence also establish a mental element; that is, that the accused know the nature of the item, consent to be in possession of the item, and have a measure of control over the item at the time it is in his physical custody.

[21] In this case, Corporal Parsons testified that he did not know the camera was the same camera that had gone missing in July of 2003, until he was advised of the results of further police investigation that identified by serial number the camera that he had dealt with in July of 2003 as being the same camera that was discovered in his residence in February of 2004.

[22] There is no issue in this case that the Nikon digital camera was stolen. In law, the unexplained possession of recently stolen goods may give rise to an inference that the possessor knew that the goods were stolen. This is not a presumption or a mandatory inference, but it is open to a court to make a finding of knowledge where the requirements of this doctrine are established.

[23] In this case, the accused, Corporal Parsons has, in the course of his testimony provided an innocent explanation for his possession of the camera on 4 February 2004. Before a court may draw the inference that the accused knew the nature of the stolen item, the court must be satisfied that the explanation given could not reasonably be true.

[24] I have already set out the main points of the explanation given by Corporal Parsons in his evidence for having the physical custody of an expensive camera stolen from the Department of National Defence. In cross-examination by the prosecutor, Corporal Parsons declined to characterize as an "unbelievable coincidence", his chance meeting at the Carsand-Mosher shop with an individual who was attempting to sell the very camera that he was looking for. I must say, however, that the circumstances strike me as highly unusual. But in addition to those unusual circumstances, the evidence discloses that the seller of the camera misspelled the words "warranty" and "transferred" on the receipt document in exactly the same way as Corporal Parsons misspelled the same two words in writing in court.

[25] I am satisfied that on the totality of these circumstances, there is no coincidence. I conclude that Corporal Parsons is the author of the receipt, Exhibit 11, despite his evidence to the contrary. The explanation given by Corporal Parsons for his possession of the stolen camera is preposterous and I do not accept it. His explanation could not reasonably be true.

[26] I, therefore, proceed to consider the doctrine of recent possession. The longer the period of time in question, the weaker is the inference of knowledge. The more readily a stolen item can be exchanged or "fenced", to use the vernacular, the weaker is the inference of knowledge. In my view, having regard for the time period of

some months between the disappearance of the camera and its discovery in the residence of the accused, and the nature of the property in question and its value, I am satisfied that this is a proper case in which to draw the inference that the accused knew that the camera was stolen.

[27] In my view, the evidence also establishes that the unauthorized possession of the camera by the accused was prejudicial to both, good order and to discipline. Corporal Parsons is guilty on the second charge.

[28] It is true that the inference of guilty knowledge as a result of the possession of recently stolen goods in law can also support an inference that the possessor is implicated in the actual theft of the goods. But for the reasons I gave above in my consideration of the first charge of stealing, I am not satisfied that such an inference should be drawn or can be drawn beyond a reasonable doubt. Corporal Parsons is not guilty of the first charge.

COMMANDER P.J. LAMONT, M.J.

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