

Citation: *R. v. Master Corporal W.B. Dunphy*, 2005CM53

Docket: F200553

**STANDING COURT MARTIAL
CANADA
ALBERTA
CANADIAN FORCES BASE/AREA SUPPORT UNIT EDMONTON**

Date: 10 January 2006

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

HER MAJESTY THE QUEEN

v.

**MASTER CORPORAL W.B. DUNPHY
(Accused)**

**FINDING
(Rendered Orally)**

[1] Master Corporal Dunphy, this court finds you guilty of charge No. 2 and charge No. 3.

[2] Master Corporal Dunphy has pleaded not guilty to two offences: a charge of using provoking gestures contrary to section 86 of the *National Defence Act*, and a charge of drunkenness contrary to section 97 of the *National Defence Act*.

[3] The prosecution at courts 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.

[5] 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 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 facts of this case are set out in Exhibit 3, the judicial confession. In summary, those facts disclose that on the date alleged in the charges, the accused directed abusive and derogatory remarks towards Private Laflamme in an aggressive manner, pointed his 9-millimetre automatic pistol in the direction of Private Laflamme, and dry fired the unloaded pistol on several occasions. Master Corporal Dunphy was drunk.

[7] I find, in all the circumstances, that the actions of the accused, as detailed in the evidence, were provocative of a quarrel or a disturbance. It appears that, in fact, no quarrel or disturbance occurred, but that I consider to be entirely due to the patience, persistence, and skill of other persons who were present, including Private Laflamme, who managed to defuse what strikes me as a situation that was fraught with danger of violence.

[8] As to the charge of drunkenness, I find that the behaviour of Master Corporal Dunphy, as alleged and admitted in the judicial confession, was disorderly by reason of the influence of alcohol that he consumed, and that his consumption of alcohol was voluntary.

[9] I am satisfied beyond a reasonable doubt as to the guilt of the accused on both charges. Indeed, his counsel raises no issue before me that undermines these conclusions.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major J.B. Cloutier, Director Military Prosecutions Central
Counsel for Her Majesty The Queen

Captain R.G. Fowler, Director of Law/Administrative Law 6
Co-counsel for Her Majesty The Queen

Major C.E. Thomas, Directorate of Defence Counsel Services
Counsel for Master Corporal W.B. Dunphy