

**Citation:** *R. v. Corporal R.D. Grant*, 2006CM11

**Docket:** F200611

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

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**Date:** 1 June 2006

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

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**HER MAJESTY THE QUEEN**

**v.**

**CORPORAL R.D. GRANT  
(Accused)**

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**FINDING**

**(Rendered Orally)**

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[1] Corporal Grant, this court finds you guilty of the charge.

[2] Corporal Grant is charged with one offence, an offence of assault causing bodily harm contrary to section 267(b) of the *Criminal Code*, which is made a service offence under section 130 of the *National Defence Act*. The circumstances involve an altercation between the accused and the complainant, Corporal Noseworthy, near the doors to the Kyrenia Club, a junior ranks mess at Canadian Forces Base Petawawa.

[3] There is no issue that the accused, Corporal Grant, struck the complainant by punching him twice causing the injuries that are shown in the photographs, Exhibits 9, 10, and 11. On the evidence, I have no hesitation concluding that Corporal Grant intended to strike Corporal Noseworthy in the manner he did, and that Corporal Noseworthy, to the knowledge of Corporal Grant, did not consent. There was therefore an assault.

[4] I also find that the injuries described by Corporal Noseworthy amount to "bodily harm" as defined in section 2 of the *Criminal Code*, and defence counsel did not suggest otherwise.

[5] The issue in this case is whether the defence of self-defence serves to justify the assault by Corporal Grant upon Corporal Noseworthy.

[6] Corporal Noseworthy testified that sometime after midnight during a social function he left the Kyrenia Club to have a cigarette outside. Another individual who he did not know was already outside. The individual, who I find to be the accused, Corporal Grant, was wearing a distinctive jacket. Corporal Noseworthy commented on the jacket as a conversation starter, perhaps using a sarcastic tone. Immediately Corporal Noseworthy was struck by two blows which he described as "coming out of nowhere." Corporal Noseworthy said nothing that might have provoked the attack. One blow bruised his right ear and the other fractured his left cheekbone. As a result of the blows he "saw white lights." He was attended to by his friend Corporal Chaisson who asked if he was all right, then they ran to catch up with Corporal Grant. Corporal Noseworthy was going to get back at Corporal Grant, but they were separated by Warrant Officer Ouellet. Then Corporals Noseworthy and Chaisson got into a cab and went home. The next day Corporal Noseworthy saw the extent of his injuries to his face, went next door to meet Corporal Chaisson, and then to the military police to make a report.

[7] Corporal Grant testified that as he was seated at a table with other persons inside the club Corporal Noseworthy approached his table looking for a lighter, and he, Corporal Grant, asked to accompany him outside for a cigarette. They left the club together to have a cigarette outside. Once outside Corporal Grant urinated on the grass, and Corporal Noseworthy approached him, put his face near Corporal Grant's genital area and made profane comments. Corporal Grant was stunned and made profane comments to Corporal Noseworthy. Corporal Grant moved back toward the club, but Corporal Noseworthy continued the argument. Corporal Noseworthy then punched Corporal Grant to the right of his head and Corporal Grant reacted with a blow to Corporal Noseworthy with his left hand rendering Corporal Noseworthy defenceless. Corporal Noseworthy asked Grant why he had hit him and Corporal Grant testified that he was confused by the question. They continued arguing until Corporal Noseworthy grabbed Corporal Grant and pushed him up against the wall. Corporal Grant immediately counterpunched with his right fist. He considered Corporal Noseworthy was no longer a threat and went back into the club and returned the lighter to the table. Corporal Noseworthy followed Corporal Grant back into the club and was telling others that he had been sucker-punched. Corporal Noseworthy's friends, especially Corporal Chaisson, became involved demanding an explanation from Corporal Grant. They followed Corporal Grant outside again and on the way outside Corporal Noseworthy threw a bottle in Corporal Grant's direction. Corporal Chaisson caught Corporal Grant outside and made threats and held Corporal Grant so that Corporal Noseworthy could punch him back. Corporal Noseworthy appeared to Corporal Grant to be angry as his fists were clenched and he was apparently intent on injuring Corporal Grant. Corporal Grant backed away and left the scene. Corporal Noseworthy came up to Corporal Grant

and pushed him three times asking why Corporal Grant had hit him. Corporal Grant made his escape.

[8] It is apparent that the versions of the events given by Corporals Noseworthy and Grant are inconsistent in many important respects and simply cannot both be true.

[9] 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.

[10] 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 proof 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.

[11] 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 the facts of the case 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 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. If the evidence given by the accused, as to the important aspects of the case, is accepted, it follows that he is not guilty of the offence. But even if that 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.

[12] For the reasons that follow, I reject the evidence of the accused as to how the events unfolded outside the Kyrenia Club. His evidence was not confirmed by Master Warrant Officer Ouellet in areas that one would reasonably expect the evidence to be confirmed if it had occurred in the way Corporal Grant testified. Corporal Grant testified that Corporal Noseworthy asked him why he had punched him. Corporal Grant testified that he was confused by Corporal Noseworthy's question. There was no reason for Corporal Noseworthy to ask why Corporal Grant punched him if, indeed, Corporal Noseworthy had punched first as Corporal Grant claims. The reason would be obvious. Finally, the evidence of Corporal Grant was not confirmed by other witnesses in addition to Master Warrant Officer Ouellet. For example, no one saw Corporal Grant return inside the club after the altercation in order to return the borrowed lighter.

[13] It is true that Corporal Grant's evidence on examination-in-chief was not undermined in the course of cross-examination, but on a consideration of all the evidence, I do not accept the evidence of Corporal Grant as to how the events unfolded.

[14] I do accept and rely upon the evidence of Corporal Noseworthy as to how the events unfolded. In material respects the evidence of Corporal Noseworthy is confirmed by the evidence of Corporal Chaisson. He testified that he saw Corporal Grant strike two blows to Corporal Noseworthy's head in rapid succession as Corporal Noseworthy was having a cigarette and facing Corporal Grant about 2 feet apart. Corporal Chaisson also described the conversation he had with Corporal Grant in which Corporal Grant denied hitting Corporal Noseworthy. I accept the evidence of Corporal Chaisson as to the conversation he had with the accused. The evidence of Corporal Grant does not square with the statements Corporal Grant made to Corporal Chaisson at the time.

[15] Counsel submits that the evidence of both Corporals Noseworthy and Chaisson is not credible because they were both very much under the influence of alcohol, sought to minimize their evidence of alcohol consumption, and colluded with each other to tailor their evidence on this point. In addition, counsel points out that Corporal Chaisson described the outer doors to the club as being made of glass, whereas the photograph taken by Corporal Grant, and Corporal Grant's evidence on this point, establish that the door in question is solid with a large window in the top half of the door. It follows that the view that Corporal Chaisson had of the events outside the club was not as clear as he testified. In addition, Master Warrant Officer Ouellet testified that he could not see out the door because of the lighting conditions.

[16] In the course of his address, counsel referred to the demeanor of the prosecution witnesses. I must say that demeanor may be in the eye of the beholder, but I did not find either Corporal Chaisson or Corporal Noseworthy to be evasive or argumentative as counsel suggests. Indeed, I consider that both witnesses were straightforward, did not embellish their evidence, and indeed, readily admitted to

certain facts which can be fairly said to put them in a somewhat unflattering light. Neither witness was successfully challenged in cross-examination on material matters.

[17] I also reject the theory that the two witnesses colluded to tailor their evidence in some manner. I accept the evidence of Corporal Noseworthy as to how he was struck by Corporal Grant. Despite his consumption of alcohol he had a clear recollection of events leading up to being struck. In my view his evidence was confirmed in a material way by his friend Corporal Chaisson who also testified that two blows were administered in quick succession. It is true that Master Warrant Officer Ouellet was not able to see what was occurring outside the doors to the club, but this does not cause me to doubt the accuracy of Corporal Chaisson's evidence as to what he saw.

[18] On these facts there is no room for a defence of self-defence as Corporal Noseworthy did not constitute any kind of threat to Corporal Grant at the time Corporal Grant struck him.

[19] The defence relies upon section 37 of the *Criminal Code* which provides:

1. Everyone is justified in using force to defend himself or anyone under his protection from assault if he uses no more force than is necessary to prevent the assault or the repetition of it.

In my view, if the evidence of Corporal Grant were accepted as to what occurred outside the club, there is a reasonable basis upon which the defence of self-defence would be put to a jury. It, therefore, would fall to the prosecution, in that circumstance, to negative self-defence beyond a reasonable doubt.

[20] In my view, if there were any reasonable doubt that the events unfolded in the manner that Corporal Grant testified to, then the amount of force used by Corporal Grant was not out of proportion to the threat that Corporal Noseworthy posed to Corporal Grant. On Corporal Grant's evidence he was the victim of an unprovoked assault by Corporal Noseworthy when Corporal Noseworthy punched him in the head and again when he grabbed him and pushed him up against the wall. However, as I stated, the evidence of Corporal Noseworthy satisfies me beyond a reasonable doubt that the events unfolded in the manner to which Corporal Noseworthy testified. I, therefore, reject the defence of self-defence.

[21] Corporal Grant is guilty as charged.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major A. M. Tamborro, Directorate Military Prosecutions

Counsel for Her Majesty The Queen

Captain N. H. Weigelt, Directorate of Defence Counsel Services

Counsel for Corporal R. D. Grant

Lieutenant-Colonel D. T. Sweet, Directorate of Defence Counsel Services

Co-Counsel for Corporal R.D. Grant