

Citation: *R. v. Lieutenant(N) C.B. Jollimore*, 2006cm2017

Docket: 200617

**STANDING COURT MARTIAL
CANADA
BRITISH COLUMBIA
CANADIAN FORCES BASE ESQUIMALT**

Date: 2 November 2006

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

HER MAJESTY THE QUEEN
v.
LIEUTENANT(N) C.B. JOLLIMORE
(Accused)

FINDING
(Rendered orally)

[1] Lieutenant(N) Jollimore, this court finds you not guilty of the charge.
You may break off and be seated beside your counsel.

[2] Lieutenant(N) Jollimore is charged with one offence under section 129 of the *National Defence Act*; that is, an act to the prejudice of good order and discipline, in that he counselled a subordinate, Petty Officer 2nd Class Williams, to lie on Lieutenant(N) Jollimore's behalf.

[3] The circumstances disclosed in the evidence involve a Naval Officer Assessment Board, NOAB, established in May of 2004 to introduce a number of young men and women to the Navy with a view to assessing their potential as officers.

[4] The accused and PO2 Williams were assigned to escort one group of candidates over a period of several days, assess the potential of the prospective candidates, and report their observations.

[5] The theory of the prosecution is that the accused was involved in some misbehaviour with one or more of the female civilian candidates in his charge, and when he came under the suspicion of his superiors, he enlisted PO2 Williams to

misrepresent the timing of certain events in order that the accused could avoid responsibility for his actions.

[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 proof beyond a reasonable doubt is much closer to absolute certainty than it is to a standard of probable guilt.

[8] 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.

[9] 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.

[10] The rule of reasonable doubt applies to the credibility of witnesses in a case, such as this case, where the evidence discloses different versions of the important facts that bear directly upon the issues. Arriving at conclusions as to what happened is not a process of preferring one version given by one witness over the version given by another. The court may accept all of what a witness says as 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.

[11] 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.

[12] The evidence led by the prosecution consisted of an Agreed Statement of Facts, reduced to writing and marked as Exhibit 3, and the testimony of PO2 Williams.

[13] He testified that for the period Monday, 3, to Friday, 7 May 2004, he was paired with the accused to escort a group of the NOAB candidates. Their role was to accompany the candidates to lectures and briefings, answer questions about naval life, and impart to them an understanding of what a career as a naval officer involved. Their duties included accompanying the candidates on social occasions arranged to allow them to be observed in social situations. One such social occasion was a barbecue on the Thursday evening, following which the accused, PO2 Williams, and a number of the candidates attended a bar establishment called the Halfway House in Esquimalt. There, PO2 Williams observed the accused dancing with some of the female candidates in a manner that PO2 Williams thought to be inappropriate, considering the obligations of the accused as an escort toward the candidates.

[14] The following morning, Friday 7 May, the witness had a conversation with the accused in which the accused described taking one of the female candidates home the previous night; that she was on his bed in her bra and panties; and that he took off her bra and they engaged in some sexual activity that PO2 Williams described. The witness testified he stated he did not wish to hear any more about these events.

[15] The following Tuesday was 11 May 2004, the date mentioned in the charge. At the request of the accused he; that is, PO2 Williams, and the accused withdrew into a workshop for a private conversation. The accused explained that he was in trouble with his superiors because of his behaviour with one of the female candidates, and that if he, Williams, were asked, he was to say that whatever happened, occurred on Friday after the course had ended, rather than the Thursday night. Williams said he could not lie and would have to tell the truth if asked about the events.

[16] PO2 Williams immediately reported his conversation with the accused to his superiors.

[17] Lieutenant(N) Jollimore gave evidence in his defence. He agreed that he and Williams had a private conversation in the workshop on 11 May at Jollimore's request. By that point Jollimore had been asked by his superior about improper sexual activity with any of the NOAB candidates, and had denied it. Jollimore was put on Counselling and Probation for what was called "perception of impropriety," and was told to keep his mouth shut about what happened and to simply "take his lumps." When Jollimore reported to his ship early on 11 May he heard remarks from junior members that caused him to believe that Williams might be spreading rumours about his behaviour with the candidates. For this reason, Lieutenant(N) Jollimore testified, he told Williams during the conversation in the workshop that he was to keep his mouth shut. Jollimore denied telling Williams about what went on in his residence with one of the

candidates. He claimed that he discussed what went on at his residence with Lieutenant(N) Simpson, and that Williams may have been present for some part of that conversation. He denied asking anyone, including Williams, to change his story, and claims he did not intend to have Williams concoct a story for him.

[18] It is plain and obvious that the two versions given by the witnesses Williams and Jollimore of the terms of their conversation in the workshop on 11 May 2004, cannot be reconciled. They are replete with inconsistencies. But as I have stated, my task is not simply to decide which of the two versions of the conversation I believe. The question for me is whether I am satisfied beyond a reasonable doubt that that conversation occurred in the way PO2 Williams described.

[19] I have carefully examined the evidence of PO2 Williams. I am satisfied that he honestly believes that he was encouraged by the accused to lie, if necessary, to support a defence as to allegations of improper conduct with a candidate during the NOAB. But the court cannot simply adopt the witness's conclusions as to the significance of the statements that were made in the conversation in the workshop. My duty is to determine if, beyond a reasonable doubt, the statements attributed to Jollimore by Williams were made.

[20] I accept the submission of counsel for the accused that PO2 Williams was inconsistent in his description to the NIS investigator and the court of the Friday conversation he attributes to the accused as to whether the female NOAB candidate was undressed down to her underwear or was "buck naked." As well, I accept the evidence of PO2 Williams that the accused explicitly stated to him that he was not asking him to lie. And I accept the submission that PO2 Williams must be incorrect about conversations he testified he had with the accused aboard the ship after the accused had been landed on 11 May.

[21] I reject the submission of counsel for the accused that the witness, PO2 Williams, was motivated by animus towards the accused to make up or embellish his evidence against the accused. Indeed, I was impressed by what appeared to me to be a genuine attempt on the part of PO2 Williams to relate as accurately as he could his present recollection of events that occurred some time ago. But considering all of the evidence of PO2 Williams, in the end I find I cannot rely on his evidence to remove all reasonable doubt as to the guilt of the accused.

[22] The accused is entitled to the benefit of that doubt. I find him not guilty.

COMMANDER P.J. LAMONT, M.J.

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