

**Court Martial Appeal Court
of Canada**



**Cour d'appel de la cour martiale
du Canada**

Date: 20180509

Docket: CMAC-590

Citation: 2018 CMAC 2

**CORAM: BELL C.J.
WATT J.A.
SCANLAN J.A.**

BETWEEN:

EX-MASTER CORPORAL N.S. EDMUNDS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Hearing held in Vancouver, British Columbia, on March 19, 2018.

Judgment delivered at Ottawa, Ontario, on May 9, 2018.

REASONS FOR JUDGMENT BY:

THE COURT

Court Martial Appeal Court
of Canada



Cour d'appel de la cour martiale
du Canada

Date: 20180509

Docket: CMAC-590

Citation: 2018 CMAC 2

CORAM: BELL C.J.
WATT J.A.
SCANLAN J.A.

BETWEEN:

EX-MASTER CORPORAL N.S. EDMUNDS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT BY THE COURT

[1] On January 25, 2017, a General Court Martial found the Appellant guilty, pursuant to s.130(1)(a) of the *National Defence Act*, R.S.C. 1985, c. N-5 [*NDA*] of four counts of fraud contrary to s. 380 of the *Criminal Code*, R.S.C. 1985, c. C-46 [*Criminal Code*]. Following

conviction, the military judge imposed a sentence of 30 days' incarceration. The military judge ordered the Appellant's release pending the hearing of the within appeal.

[2] The Appellant contends the convictions are null and void given that the charge-layer did not have reasonable grounds to believe the offences had been committed at the time he (the charge-layer) signed the Record of Disciplinary Proceedings [RDP]. The RDP is the military law equivalent of an information in the criminal law context. The Respondent admits the charge-layer did not have the requisite reasonable belief, and concedes that the appeal should be allowed and the convictions quashed. We agree.

[3] Although the *NDA* contains no provision identical to s. 504 of the *Criminal Code*, which requires that the informant possess reasonable and probable grounds to believe an accused has committed an offence, a similar requirement exists by application of the Queen's Regulations and Orders for the Canadian Armed Forces (QR&O) s. 107.02, and the Note attached thereto.

Those provisions read as follows:

**107.02 – AUTHORITY TO
LAY CHARGES**

The following persons may lay charges under the Code of Service Discipline:

- a. a commanding officer;
- b. an officer or non-commissioned member authorized by a

**107.02 – POUVOIR DE
PORTER DES
ACCUSATIONS**

Les personnes suivantes peuvent porter des accusations sous le régime du code de discipline militaire :

- a. un commandant;
- b. un officier ou militaire du rang autorisé par un commandant à porter des

commanding officer to lay charges; and

accusations;

c. a member of the military police assigned to investigative duties with the Canadian Forces National Investigation Service.

c. un policier militaire à qui on a assigné une fonction d'enquêteur au sein du Service national d'enquêtes des Forces canadiennes.

NOTE

There must be an actual belief on the part of the person laying a charge that the accused has committed the alleged offence and that belief must be reasonable. A “reasonable belief” is a belief which would lead any ordinary prudent and cautious person to the conclusion that the accused is probably guilty of the offence alleged.

NOTE

La personne qui porte une accusation doit croire que l'accusé a commis l'infraction en question et la croyance sur laquelle elle s'appuie doit être raisonnable. L'expression «croyance raisonnable» fait référence à la croyance qui amènerait une personne ordinairement prudente à conclure que l'accusé est probablement coupable de l'infraction reprochée.

[4] As in the criminal law system, the requirement that the charge-layer possess reasonable grounds to believe the accused has committed the offence charged constitutes a safeguard against the irresponsible laying of charges (*R. v. Peavoy*, [1974] O.J. No. 103, (1974) 15 C.C.C. (2d) 97 (Ont. H.C.). See also *R. v. Delalla*, 2015 BCSC 592, [2015] B.C.J. No. 702 [*Delalla*], at paras 60-63; *R. v. Edge*, 2004 ABPC 55, 21 CR (6th) 361 at paras 23-25). Failure to meet this reasonably grounded belief requirement is fatal to an RDP and results in a loss of jurisdiction (*R. v. Awad*, 2015 NSCA 10, [2015] N.S.J. No. 34; *Delalla*; *R. v. Pilcher*, [1981] M.J. No. 552, (1981) 58 C.C.C. (2d) 435 (Man. Prov. Ct.)). Where this loss of jurisdiction arises, the RDP

cannot be cured by the subsequent referral of charges by the Director of Military Prosecutions (*R. v. Laity*, 2007 CM 3011, at para. 30).

[5] In his written submissions, the Appellant also sought a stay of proceedings based upon alleged Crown misconduct and a purported violation of his right to be tried within a reasonable time. In support of the latter claim, he relied upon s. 11(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c. 11 [*Charter*] and the decision in *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631. At the outset of the oral hearing on this appeal, the Appellant acknowledged that if the trial proceedings constituted a nullity, there exists no properly instituted proceeding for which a stay could be granted on either basis advanced. We agree. The proceedings and convictions are rendered a nullity by the charge-layer's lack of reasonably grounded belief. We allow the appeal and quash the convictions. In the circumstances, we have no jurisdiction to grant the Appellant's request for a stay of proceedings.

“B. Richard Bell”

Chief Justice

“David Watt”

J.A.

“J. Edward Scanlan”

J.A.

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: CMAC-590

STYLE OF CAUSE: D77 987 837 EX-MASTER
CORPORAL N.S. EDMUNDS v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: MARCH 19, 2018

REASONS FOR JUDGMENT BY: BELL, C.J., WATT, SCANLAN
J.J.A.

REASONS FROM THE BENCH BY: THE COURT

DATED: MAY 9, 2018

APPEARANCES:

Lieutenant-Colonel Denis Bernsten FOR THE APPELLANT

Major Dylan Kerr FOR THE RESPONDENT

SOLICITORS OF RECORD:

Defense Counsel Services FOR THE APPELLANT
Sidney, British Columbia

Canadian Military Prosecution Service FOR THE RESPONDENT
Ottawa, Ontario