Court Martial Appeal Court of Canada

Cour d'appel de la cour martiale du Canada

Date: 20251014

Docket: CMAC-631

Citation: 2025 CMAC 2

[ENGLISH TRANSLATION]

CORAM: **GLEASON C.J.**
COURNOYER J.A.
BOIVIN J.A.

BETWEEN:

MASTER CORPORAL CLAUDE HOUDE

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Montréal, Quebec, on May 13, 2025.

Judgment delivered at Ottawa, Ontario, on October 14, 2025.

REASONS FOR JUDGMENT BY: COURNOYER J.A.

CONCURRED IN BY: GLEASON C.J.
BOIVIN J.A.

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Order restricting publication: The order of the Court Martial issued pursuant to section 179 of the *National Defence Act*, R.S.C. 1985, c. N-5 remains in effect. No person shall publish or broadcast or transmit in any way any information that could identify any person described in proceedings before the Court Martial or this Court as being a complainant or victim, specifically and not restrictively referred to as "L.P."

REASONS FOR JUDGMENT

COURNOYER J.A.

[1] On June 3, 2022, the panel of the General Court Martial found the appellant guilty of two charges of sexual assault against his former partner, committed while they were living together near the Canadian Forces Base Bagotville between 2013 and 2018. He was acquitted of the first charge of sexual assault causing bodily harm.

[2] Master Corporal (MCpl) Houde is appealing the two findings of guilt made by the panel of the General Court Martial. His grounds of appeal centre on the judge's instructions to the panel, the judge's refusal to order the production of text messages, and the dismissal of his constitutional challenge under paragraph 11(d) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*] and the status of military judges under the *National Defence Act*, R.S.C. 1985, c. N-5 [*NDA*].

[3] The appellant abandoned the ground of appeal concerning his application for production of text messages, which was made in accordance with the scheme set out in sections 278.1 *et seq.* of the *Criminal Code*, R.S.C. 1985, c. C-46. Furthermore, the constitutional debate surrounding the status and independence of military judges was settled by the Supreme Court in *R. v. Edwards*, 2024 SCC 15. In that judgment, the Supreme Court determined that the requirement under section 165.21 and subsection 165.24(2) of the *NDA* that military judges be officers of the Canadian Armed Forces does not fall afoul of paragraph 11(d) of the *Charter*.

[4] For the following reasons, I propose that the Court allow the appellant's appeal on account of the errors in the judge's charge to the panel. Insofar as a new trial should be held, I

consider it prudent to limit myself to what is strictly necessary to properly understanding the appeal.

I. FACTS

[5] The trial judge helpfully summarized the evidence pertaining to the second and third charges in his sentencing decision: *R. c. Houde*, 2023 CM 4004 at paras. 9–15. For the purposes of this appeal, it is not necessary to provide further details.

[6] It is sufficient to say that the versions of the events presented by the appellant and the complainant at trial were contradictory, as is often the case in these matters: *R. v. Kruk*, 2024 SCC 7 at para. 81.

II. ISSUES

[7] The only two remaining grounds of appeal are the following:

(a) Did the judge provide instructions that were contrary to the principles set out in *R. v. W(D)*, [1991] 1 S.C.R. 742 [*W(D)*]?

(b) Did the judge make inappropriate comments regarding the evidence, the photographic evidence in particular?

III. POSITIONS OF THE PARTIES

A. *Appellant*

(1) The challenged passages in the instructions to the panel

[8] The appellant is mainly challenging three passages from the judge's charge to the panel. I have reproduced these passages, applying the formatting used on the text preceding the second challenged passage:

> [TRANSLATION]
>
> 4. In my opinion, the key issue you will have to decide is whether the prosecution was able to prove, beyond a reasonable doubt, that MCpl Houde committed the actions alleged against him, namely, his conduct, in connection with the three charges. The prosecution has called only one witness, so the credibility you will give this testimony will be determinative.
>
> ***
>
> **ISSUES RAISED AT TRIAL AND IN THE ARGUMENTS**
>
> **Main issue: [the complainant's] credibility**
>
> *Introduction*
>
> 1. In my view, the main issue you will have to determine during your deliberations relates to the credibility you will give to the testimony of the prosecution's only witness, the [complainant]. If you believe the witness's testimony, it should not be very difficult for you to answer the questions I will list later on concerning the essential elements of the offences.
>
> ***
>
> After considering the general principles that were previously explained—the presumption of innocence, the burden of proof, the assessment of the evidence, the application of reasonable doubt to the credibility issue—and after considering the accused's testimony in light of the analytical framework described, you will

> be able to arrive at a finding on the credibility of the [complainant's] testimony and on the facts she has related.

[9] The appellant alleges that the judge's instructions, including some of his comments, provided the panel with an understanding of the law that was contrary to the principles in *W(D)* and that contributed to reducing the value and relevance of certain arguments that were made.

[10] Further, the appellant submits that the instructions to the panel contained three passages that were misleading and that focused the panel members' attention on the prosecution's evidence, more particularly the complainant's credibility.

[11] The appellant contends that the instructions regarding the complainant's credibility resulted in the exclusion of the first two steps of the *W(D)* test and in a reversal of the burden of proof, as they deprived the appellant of the benefit of the reasonable doubt that his testimony or the evidence as a whole could have raised.

[12] The appellant argues that the judge erred in law by asserting that the credibility of L.P., the prosecution's only witness, was determinative and that the main issue to decide involved the credibility to afford that witness.

[13] Lastly, the appellant submits that the judge provided an instruction that made the finding on the complainant's credibility the ultimate determinant as regards the application of the legal principles in criminal cases, which turned the matter into a credibility contest between the complainant and the accused.

[14] According to the appellant, the charge placed more importance on the complainant's testimony than on his own, which made this instruction unfair. Indeed, characterizing the complainant's credibility as the main issue limited the panel's deliberations to this *determinative* issue, thereby sidelining the other principles applicable in criminal law, such as reasonable doubt and the presumption of innocence.

[15] Contrary to the judge's statements in his charge, the appellant alleges that although the issue of the complainant's testimony was important, it was not determinative.

[16] The appellant argues that the judge made biased comments that gave a favourable impression of the complainant's testimony.

[17] First, the appellant criticizes the judge's summary of the complainant's cross-examination for being limited to only six key points. The appellant asserts that this brief summary minimized the effect of the cross-examination, suggesting to the panel that this had been a needlessly lengthy exercise that had brought to light [TRANSLATION] "few things worth mentioning".

[18] The appellant also criticizes the judge's comments on the complainant's credibility and her inconsistent statements. The appellant points to four elements from the charge that he considers inappropriate:

(a) The judge reminded the panel that the complainant had sworn to tell the truth. The appellant contends that the purpose of this reminder was to strengthen the complainant's credibility.

(b) The judge mentioned *possible* contradictions and *attempts* by the defence to show that some statements were inconsistent. The appellant draws attention to these word choices, which indicate that the inconsistencies were not certain, and submits that these comments reduced the cross-examination's impact.

(c) The judge asserted that when a person is giving testimony, they will very rarely describe events the same way they did during a police report that was provided months or years earlier. The appellant alleges that this statement made the inconsistencies that the defence raised in the complainant's testimony seem normal, even trivial.

(d) The judge asked the panel to assess whether the complainant was trying to [TRANSLATION] "lay it on thick" during her testimony, as the defence suggested. The appellant submits that the use of this expression was a criticism that adversely affected the defence because it suggested that the defence was exaggerating and that there were no inconsistencies or contradictions in the complainant's testimony.

[19] Lastly, the appellant criticizes the specific warning the judge provided about two photographs that the appellant had taken of the washroom where the events that are the subject of the third charge allegedly transpired; these photographs apparently illustrate the position the complainant was in.

[20] Here is the text of the warning given by the trial judge:

[TRANSLATION]

INSTRUCTION - PHOTOGRAPHS

Photograph of MCpl Houde with two arms on the toilet seat: The photograph of MCpl Houde in a position that he believes matches the position the [complainant] testified having adopted has been admitted to illustrate his statements and to help you understand the next part of his testimony. Once evidence has been admitted, it is up to the trier of fact—namely, you—to decide whether it should be relied on or not, and to determine how much importance or "weight" to give to it.

First, the trier of fact will not rely on evidence it does not believe, just as it will mostly not rely on evidence when it is not certain that it should be believed. On the basis of the evidence heard, it is your responsibility to determine what evidence you will accept with respect to the [complainant's] position in the washroom. If you do not believe, on the basis of the evidence, that the [complainant] was indeed in the position depicted in the photograph, that will affect how you treat this evidence.

Second, even if you accept the evidence by believing, for example, that the [complainant] was indeed in the position shown in the photograph, this evidence may be more important or less important. Among other things, you must keep in mind that the person in the photograph is different [from the complainant]. The person does not have the same build. This fact is important in terms of the weight you will give this evidence. It is up to you to determine to what extent the photograph is informative, that is, to what extent it supports the conclusions suggested by other evidence or by the theory or theories put forward by either party.

Photograph of MCpl Houde leaning to one side: The photograph of MCpl Houde in a position that he testified seeing the [complainant] adopt during the events that followed the Christmas party was admitted to illustrate his statements and to help you understand the next part of his testimony. You must keep in mind that the person in the photograph is different [from the complainant]. The person does not have the same build. This fact is important in terms of the weight you will give this evidence.

[21] According to the appellant, these photographs show that the space was small, which made it difficult to commit the offence. In his view, this evidence was likely to raise a reasonable doubt.

[22] The appellant argues that the warning unreasonably limited, even destroyed, the probative value of these photographs, which effectively discredited the appellant's defence.

B. *Prosecution*

[23] The prosecution submits that the judge's instructions to the panel were adequate and consistent with the *W(D)* principles, and that they contained no inappropriate comments.

[24] The prosecution is of the opinion that a functional approach must be adopted in assessing the adequacy of the instructions provided. An appellate court must not analyze the alleged errors in isolation, but rather within the context of the evidence, the entire charge and the trial as a whole.

[25] The prosecution asserts that the trial judge adequately explained the *W(D)* principles and that the instructions to the panel were wholly consistent with the model instructions proposed by the Canadian Judicial Council's National Committee on Jury Instructions, including the proposed instructions on contradictory testimony.

[26] According to the prosecution, the appellant is analyzing the challenged passages in isolation. When considered as a whole, the judge's instructions to the panel did not lead to an erroneous understanding of the *W(D)* principles, particularly those that apply to contradictory testimony.

[27] First, the prosecution notes that the judge's characterization of the complainant's credibility as determinative was not an instruction to the panel. It argues that it was a comment or an instruction on a fact that does not inappropriately link the presumption of innocence to the complainant's credibility.

[28] The prosecution adds that the judge's statement that the main issue concerned the complainant's credibility was also not an instruction. Instead, this statement was a preliminary comment and sidenote.

[29] The prosecution alleges that throughout his charge, the judge explained the connection between the credibility assessment and the prosecution's ultimate burden to prove beyond a reasonable doubt that the accused was guilty. The prosecution also notes that the judge asserted several times that the appellant would be presumed innocent until the panel was convinced beyond a reasonable doubt that he was guilty.

(1) The judge's comments

[30] The prosecution argues that the judge's comments or opinions did not aim to influence the members of the panel or to devalue the defence's evidence, and they did not vitiate the instructions. On the contrary, the judge clearly told the members of the panel that it was up to them to determine whether the complainant had contradicted herself in her testimony, and he reminded the panel several times not to take into account his opinion on the questions of fact.

[31] Also, the prosecution notes that counsel for the appellant had endorsed the judge's comments and that, as regards the expression [TRANSLATION] "lay it on thick", the judge had simply reproduced the exact wording that counsel for the appellant had used in his closing arguments.

[32] As for the photographs the appellant had taken of the washroom, which counsel for the appellant described as [TRANSLATION] "incontrovertible" and [TRANSLATION] "completely unbiased" evidence, the prosecution submits that the judge had given an adequate warning against using this evidence to bolster a deficient argument or unacceptable reasoning.

[33] In short, the judge guided the panel members on the applicable law and consistently held that it was up to the panel members, as the trier of fact, to determine the weight of the evidence.

IV. ANALYSIS

[34] Before beginning to analyze the grounds of appeal raised by the appellant, I must briefly summarize the state of the law with respect to an appellate court's powers when a jury charge is challenged, the standard of review, and the relevant legal principles.

[35] Challenges to a judge's instructions to the jury are analyzed as an error of law: *R. v. Abdullahi*, 2023 SCC 19 at para. 30 [*Abdullahi*]; *R. v. Illes*, 2008 SCC 57, [2008] 3 S.C.R. 134 at para. 21.

[36] A functional approach must be adopted when reviewing a jury charge. An appellate court must determine whether the jury was properly, not perfectly, instructed. The charge must be read as a whole. Ultimately, it must be determined whether the jury "was 'properly equipped'" to decide the case: *Abdullahi* at paras. 34–35. That said, an appellate court needs to be mindful that the jury is the sole trier of fact, but it is not presumed to know the law that it must apply when reaching its verdict: *Abdullahi* at para. 31.

[37] In this case, the parties agree that the jury charge, save for three of its passages, complies with the model instructions proposed by the Canadian Judicial Council's National Committee on Jury Instructions with respect to reasonable doubt, the presumption of innocence, and contradictory versions.

[38] The debate centres on three problematic passages, which I am reproducing again for convenience, with some elements underlined:

> [TRANSLATION]
>
> 4. In my opinion, the key issue you will have to decide is whether the prosecution was able to prove, beyond a reasonable doubt, that MCpl Houde committed the actions alleged against him, namely, his conduct, in connection with the three charges. The prosecution has called only one witness, so the credibility you will give this testimony will be determinative.
>
> ***
>
> **ISSUES RAISED AT TRIAL AND IN THE ARGUMENTS**
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>
> ***
>
> After considering the general principles that were previously explained—the presumption of innocence, the burden of proof, the assessment of the evidence, the application of reasonable doubt to the credibility issue—and after considering the accused's testimony in light of the analytical framework described, you will be able to arrive at a finding on the credibility of the [complainant's] testimony and on the facts she has related.

[39] These instructions are highly problematic. They direct the panel's attention to only one issue: the complainant's credibility. As a result, these instructions explain to the panel that if it believes the complainant, the appellant must inevitably be found guilty because the panel [TRANSLATION] "will not find it very difficult" to answer questions [TRANSLATION] "concerning the essential elements of the offence."

[40] It should be recalled that although a complainant's credibility is important, it is not the main issue during a criminal trial. The issue at the end of a trial where contradictory versions were presented is not "credibility, but reasonable doubt": *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869 at para. 65; *R. v. S.B.*, 2023 ONCA 784 at para. 59; *Wilson v. R.*, 2013 NBCA 38 at para. 36, A.1; *R. v. C.*, 2004 NSCA 135 at para. 19; *R. v. Mah*, 2002 NSCA 99 at para. 41; *R. v. P. N.*, 2013 NLCA 16 at para. 15.

[41] In *K.E. v. R.*, 2006 PESCAD 25, 214 C.C.C. (3d) 449, Chief Justice Mitchell of the Prince Edward Island Court of Appeal eloquently explained the issue that arises when the focus is on the complainant's credibility, as is the case here:

> [13] The danger in "he said/she said" cases, if great care is not taken, is that they are liable to become a credibility contest in which the burden of proof may inadvertently be shifted to the accused.
>
> [14] In the case at bar the trial judge at pp. 32-33 of the transcript of reasons said:
>
> > This type of case depends on the strength of the Crown's principal witness, the complainant.
>
> Such an approach invites the very danger identified above. It has a tendency, if the complainant is believed, as she was in this case, to effectively shift the onus of proof to the accused and cut short the process of determining whether there is reasonable doubt.
>
> [15] Determining credibility is never the end in the process of judging a criminal case. The ultimate issue is always reasonable doubt. The onus never shifts away from the Crown throughout the trial to prove its case beyond a reasonable doubt. The fact that a complainant turns out to be a strong and convincing witness does not necessarily mean such proof has been provided. The role of the trier of fact in a criminal trial is not to choose among contradictory versions but to determine whether the Crown has proven its case beyond a reasonable doubt. As Binnie J. said in *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869 at para 65:
>
> > The issue at the end of the trial [is] not credibility but reasonable doubt.

> Thus, contrary to what the trial judge said, this type of case, like all criminal cases, depends on reasonable doubt not the credibility of the complainant.
>
> [16] Triers of fact in criminal matters must be constantly alert to avoid the danger of jumping from a finding of credibility to a finding of guilt. It was for this reason that in *W. (D.)* at pp.757-758 Cory J. suggested the following formula for instructing juries in matters of credibility when the accused testifies:
>
> > First, if you believe the accused, obviously you must acquit. Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit. Third even if you are not left in reasonable doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence you do accept, you are convinced beyond a reasonable doubt of the guilt of the accused.
>
> [Emphasis added.]

[42] The prosecution submits that these were only comments that were not binding on the panel. This argument is flawed because they were instructions on the law relating to the assessment of the complainant's testimony. The analysis of a judge's charge to a jury is based on a firmly held belief that the jury—in this case, the panel—performs its duties according to the law and the instructions it is given: *R. v. Corbett*, [1988] 1 S.C.R. 670 at 692–93; *R. v. Khill*, 2021 SCC 37, [2021] 2 S.C.R. 948 at para. 116; *R. v. Barton*, 2019 SCC 33, [2019] 2 S.C.R. 579 at para. 177.

[43] The prosecution contends that the jury charge was otherwise irreproachable and that, insofar as the functional approach dictates that the charge must be considered as a whole, the defects in the charge cannot vitiate it entirely. In short, it cannot be assumed that the panel had forgotten the correct instructions it had been given.

[44] In this regard, I recently provided the following explanation on behalf of the Quebec Court of Appeal in *Blanchard c. R.*, 2025 QCCA 3 [*Blanchard*] regarding the functional approach and errors in certain passages of a jury charge:

> [TRANSLATION]
>
> Considering the jury charge as a whole does not involve carefully curating a list of the passages that correctly set out the law and disregarding those that are obviously erroneous in order to find that the jury was properly equipped and was "both accurately and sufficiently instructed".
>
> *Blanchard* at para. 72 (citations omitted).

[45] That said, I acknowledged in the same case that instructions must not be scrutinized line by line and that they may well be correct overall despite a few oversights that will not prevent the jury from ruling in accordance with the law and the evidence: *Blanchard* at para. 74 (citations omitted).

[46] Of course, one misstatement might be compensated for by an accurate statement elsewhere in the charge: *Abdullahi* at para. 41. In this case, however, the flawed passages stray significantly from the law as it should be laid out. They erroneously focused the panel's attention on the complainant's credibility, which was presented as the main and determinative issue.

[47] Errors in a charge must be assessed based on "the general sense which the words used must have conveyed, in all probability, to the mind of the jury": *Abdullahi* at para. 40; *R. v. Daley*, 2007 SCC 53, [2007] 3 S.C.R. 523 at para. 30. The sense that the judge conveyed to the panel was clear: if the panel believed the complainant, it [TRANSLATION] "would not find it very

difficult" to answer the questions on [TRANSLATION] "the essential elements of the offence." Thus, the credibility afforded to the complainant dictated the outcome of the trial. These are fundamental errors.

[48] I am fully aware that counsel for the appellant had the opportunity to comment on the judge's draft charge. This factor must be considered, but it cannot be determinative in this case. First, the errors in the charge are major and go to the very heart of the assessment of reasonable doubt and the presumption of innocence when contradictory versions exist. Second, the responsibility for the jury charge lies with the trial judge, not counsel: *Abdullahi* at para. 67.

[49] Lastly, the prosecution points to the fact that the appellant was acquitted of the first charge against him and that the alleged errors do not seem to have influenced the panel. Since the panel, like a jury, does not provide reasons for its verdict, it is difficult to determine whether this acquittal stemmed from the evidence adduced, from the assessment of the appellant's or the complainant's credibility on this charge, or simply from reasonable doubt.

[50] Conjecture should be avoided in this regard. The Quebec Court of Appeal provides the following explanation in *Primeau c. R.*, 2021 QCCA 544 [*Primeau*]:

> [TRANSLATION]
>
> The purpose of a judge's instructions is to equip the jury with all the necessary tools on how to think about the evidence presented to it and to address the facts while upholding the law. These were not provided to it in this case, and we cannot conclude—to do so would be speculation—that it would have made the same verdict if it had been adequately instructed.
>
> *Primeau* at para. 78.

[51] I am of the opinion that the first ground the appellant raised justifies, on its own, a new trial on the second and third charges.

A. *The inappropriate comments in the charge*

[52] Although the appellant criticizes several passages, I consider it necessary to tackle only one element, namely, the element involving the photographs the appellant took relating to the third charge. I have reproduced the instruction at paragraph 20 of these reasons.

[53] In my opinion, the judge's instruction was unfair. It is recognized that a judge may comment on the evidence (*R. v. Gunning*, 2005 SCC 27, [2005] 1 S.C.R. 627), although this might not be advisable: *Blanchard* at para. 133. That said, when a judge comments on the evidence, he or she must do so fairly: *Mailhot c. R.*, 2012 QCCA 964 at para. 188 (Justice Doyon dissenting), affirmed by the Supreme Court: 2013 SCC 17, [2013] 2 S.C.R. 96.

[54] However, the judge expressed his opinion on the probative value of the photographs while neglecting to explain how it could support the appellant's version. Of course, the judge was right to indicate that the appellant's build was different from the complainant's.

[55] But according to the version of the complainant herself, the appellant was behind her during the alleged assault, which supports the appellant's version as regards the smallness of the space. Indeed, on the basis of one of the photographs adduced, fewer than 34 inches separated the toilet from the storage cabinet facing it. The panel received no instructions providing

adequate insight on the space in which the assault apparently occurred and the extent to which the smallness of that space, as established by the various photographs, could cast reasonable doubt on the complainant's version.

[56] Furthermore, as the appellant indicates in his memorandum, the judge's instruction contains another error. I have underlined the problematic passage in the instruction the appellant is challenging:

> [TRANSLATION]
>
> First, the trier of fact will not rely on evidence that it does not believe, just as it will mostly not rely on evidence when it is not certain that it should be believed. On the basis of the evidence heard, it is your responsibility to determine what evidence you will accept with respect to the [complainant's] position in the washroom. If you do not believe, on the basis of the evidence, that the [complainant] was indeed in the position depicted in the photograph, that will affect how you treat this evidence.

[57] The appellant rightly relies on the Court of Appeal for Ontario's decision in *R. v. Miller* (1991), 68 C.C.C. 3(d) 517 [*Miller*] and the British Columbia Court of Appeal's decision in *R. v. Subramaniam*, 2022 BCCA 141 [*Subramaniam*].

[58] The judge invited the jury to determine whether it accepted the photographic evidence before considering it evidence that it had to assess. However, [TRANSLATION] "it is inappropriate to invite the jury to eliminate evidence that it does not consider truthful and reliable and to accept only the evidence that it believes in order to render its verdict": *R. c. Ranwez*, [2004] J.Q. 2897; 2004 CanLII 20539 at para. 28 [*Ranwez*]. The jury [TRANSLATION] "must consider all the evidence, not only the evidence it accepts": *Ranwez* at para. 31.

[59] In *Miller*, the Court of Appeal for Ontario provides the following explanation: "…evidence which is neither rejected nor accepted should survive to the final stage of the jury's determination on the crucial application of reasonable doubt" (*Miller* at 543). See also *Subramaniam* at paras. 63–65; *Hunt c. R.*, 2022 QCCA 805 at paras. 44–46.

[60] The authors of *Traité général de preuve et de procédure pénales* clearly explain the legal principles surrounding the error outlined in *Miller*:

> [TRANSLATION]
>
> From a practical standpoint, the trier of fact may accept certain pieces of evidence and reject others, particularly if that evidence is contradictory. To avoid a serious error of law, however, the judge must explain to the jury that it can divide the evidence in this way only after reviewing it as a whole, and not after viewing each fact in a vacuum. Similarly, appellate courts have frequently stated that a jury must not be told that the facts it accepts will become the evidence and that those it rejects will remain facts, and to then base its verdict on the evidence. A judge also cannot, even implicitly, invite the jury to focus its analysis on a single piece of circumstantial evidence. This increases the risk that the assessment will be truncated or carried out in a vacuum. In short, the trier of fact must always reflect on all the evidence, which includes the facts that it sets aside, because a fact that is not believed may nevertheless contribute to raising a reasonable doubt.
>
> M. Vauclair, T. Desjardins & P. Lachance, *Traité général de preuve et de procédure pénales*, 31st ed. (Éditions Yvon-Blais, 2024), para. 34.3 at 938–39 (citations omitted).

[61] Therefore, I am of the view that the judge made two errors in his instruction regarding the photographs taken by the appellant. Although these errors concern only the third charge, this ground is an additional reason to order a new trial with respect to this charge.

[62] For these reasons, I propose that the Court allow the appeal and order a new trial with respect to the second and third charges.

"Guy Cournoyer"
J.A.

"I agree.
Mary J.L. Gleason, C.J."

"I agree.
Richard Boivin, J.A."

Certified true translation
Melissa Paquette, Senior Jurilinguist

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	CMAC-631
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CONCURRED IN BY:	GLEASON C.J. BOIVIN J.A.
DATED:	OCTOBER 14, 2025

APPEARANCES:

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Lieutenant-Colonel Karl Lacharité Major Emmanuelle Léonard-Dufour	FOR THE RESPONDENT

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