



COURT MARTIAL

Citation: *R. v. Khan*, 2024 CM 3009

Date: 20240509

Docket: 202352

Standing Court Martial

3rd Canadian Division Support Base Detachment Wainwright
Wainwright, Alberta, Canada

Between:

His Majesty the King

- and -

Private L.I. Khan, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Private (Pte) Khan pleaded guilty to the second charge of having fought with a person subject to the Code of Service Discipline (CSD). The first charge was withdrawn by the prosecutor before the offender pleaded to the charges. The remaining charge reads as follows:

“SECOND CHARGE
Section 86 *NDA*

**FOUGHT WITH A PERSON SUBJECT
TO THE CODE OF SERVICE
DISCIPLINE**

Particulars: In that he, on or about 19 March 2023, at or near Canadian Forces Base Wainwright, Alberta, fought with Pte Sparks-Johnson.”

[2] The Court, having accepted and recorded the plea of guilty in respect of the second charge, now finds Pte Khan guilty of this offence.

[3] In the particular context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of the military activity in the Canadian Armed Forces (CAF). The purpose of this system is to prevent misconduct or, in a more positive way, promote good conduct. It is through discipline that an armed force ensures that its members will accomplish successful missions in a trusting and reliable manner.

[4] Concerning the sentence to be imposed by the Court, the prosecutor and the offender's defence counsel presented a joint submission. They recommended that the Court impose a reprimand, a fine in the amount of \$2,000 to be paid in monthly instalments of \$350 and confinement to barracks for a period of twenty-one days.

[5] The circumstances of the offence were presented to the Court through a Statement of Circumstances read by the prosecutor, and for which the offender acknowledged these facts as conclusive evidence. The Statement of Circumstances reads as follows:

"STATEMENT OF CIRCUMSTANCES

1. Pte Khan joined the Canadian Armed Forces, Regular Force, in 2021. At the time of the events, he was posted to the 3rd Canadian Division Training Centre at CFB Wainwright.

2. During the days preceding the events, Pte Khan had been having some minor personal conflict with the complainant, Pte Sparks-Johnson. Both were members of the Basic Trained Platoon (BTP) and resided in quarters in building 626 at CFB Wainwright.

3. On the afternoon of 19 March 2023, Pte Khan was angry at Pte Sparks-Johnson over what he perceived as the complainant's disrespectful behaviour towards him the night before.

4. Pte Khan went into Pte Sparks-Johnson's room and closed and locked the door behind him. The complainant was inside, lying on his bed taking a nap, although Pte Khan did not know that Pte Sparks-Johnson was asleep at the time. Pte Khan approached Pte Sparks-Johnson who awoke to see the accused hovering over him with raised fists. Pte Sparks-Johnson tried to repel the accused by kicking him in the leg. He picked up a knife and yelled at the accused to get out of his room, but the accused then punched him twice in the face.

5. Fellow members of the platoon heard the commotion coming from inside Pte Sparks-Johnson's room and began banging on the door and

shouting for it to be opened. Pte Khan then opened the door and left the scene.

6. Pte Sparks-Johnson was spitting blood and his nose continued bleeding for five to ten minutes.

7. Pte Sparks-Johnson reported the incident to Sgt Stacey by text message shortly after it occurred; Sgt Stacey then contacted the military police. Pte Khan was arrested the same day and released with conditions a few hours later. On 29 March 2023 he participated in a voluntary recorded interview with investigators during which he admitted to having punched Pte Sparks-Johnson.”

[6] The prosecution confirmed that the victim did not intend to present a victim impact statement and the unit did not provide a military impact statement. The evidence introduced before the Court was a Statement as to Particulars of Service of the offender, the View Pay Entitlement for the month of April 2024, the Member’s Personnel Record Résumé and a letter from the section commander from a recent trade course the offender attended.

[7] Although this Court is not bound by the joint recommendation made by counsel, it is generally accepted that the sentencing judge should depart from the joint submission only when it is contrary to the public interest or will bring the administration of justice into disrepute. The only situation where the Court would depart from the joint recommendation is where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. It is the responsibility of military lawyers, in these circumstances, to provide the Court with a full account of the offender’s situation and of the circumstances of the offence in a joint submission. Here, the Court is satisfied with the information provided by counsel. They provided sufficient and detailed information for the Court to appreciate the joint submission arising from their discussions in the specific context they were dealing with.

[8] Pte Khan joined the regular force in September 2021 as an infanteer, and was posted to Wainwright, AB with the 1st Battalion of the Royal Canadian Regiment in August 2022. The commission of the offence took place in March 2023, and he was posted a year later to Canadian Forces Base Petawawa. The Court was informed he recently attended a trade course and performed well. There have been no discipline issues since the commission of the offence.

[9] The discussion between counsel was governed by the following sentencing principles; to maintain confidence of the public in the CAF as a disciplined armed force; specific and general deterrence of the offender and other persons from committing such offences and denunciation of the conduct.

[10] When dealing with the applicable principles for the determination of the sentence, it is clear that counsel demonstrated that there is no need for the Court to impose imprisonment or detention because there are less restrictive punishments available. The proposed sentence is required to maintain discipline, and respect the principles of parity, meaning the punishment proposed is similar to other similar sentences for other similar offenders committing similar offences in similar circumstances.

[11] Section 86 of the *National Defence Act* (NDA) aims to sanction the behaviour of any person subject to the CSD who, because of their comments, attitude or gestures provoke or participate in a quarrel or disturbance that may impact the discipline, morale and the cohesion at any level of the CAF. The purpose of this offence is also to ensure minimal respect which each member must demonstrate and that must exist between members at all ranks to avoid any behaviour that would lead to any of them to a state of disobedience that would affect discipline, cohesion and morale of CAF members. In other words, this type of offence aims to encourage CAF members to demonstrate self discipline in a context where emotional or physical violence is involved in order to refrain from and prevent any disruption of the discipline that must exist in a military environment within a group of soldiers, sailors, aviators or a mixture of these members.

[12] The specifics of the case involved the use of violence without provocation, and the victim was injured. As mentioned by counsel, it is not acceptable behaviour, and it reflects poor judgement on the part of Pte Khan. However, it is clear Pte Khan accepted the responsibility for what he did. It is also clear to the Court he is a first-time offender and he apologized to the victim.

[13] That being said, I accept the joint submission made by counsel to sentence the offender to a reprimand, a fine in the amount of \$2,000 and confinement to barracks for a period of twenty-one days as it is not contrary to the public interest and will not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[14] **FINDS** Pte Khan guilty of the second charge of having fought with a person subject to the CSD, contrary to section 86 of the *NDA*; and

[15] **SENTENCES** the offender to a reprimand, a fine in the amount of \$2,000 and confinement to barracks for a period of twenty-one days. The fine will be paid in eight monthly instalments of \$250 starting on 1 June 2024. If Pte Khan is released from the CAF before the fine is paid in full, the remaining amount will be due before his release. The confinement to barracks is to be carried out at CFB Petawawa, building Y101, room 186. The offender may go to various places, including room 142 of building Y101, and any other location as authorized by his chain of command. He may also access the gym. Meals will be in the Normandy mess hall at 132 Nicklin parade square. He may also access health services as needed. Confinement to barracks includes the

punishment of extra work and drill, which will commence 10 May 2024 and be completed by 30 May 2024.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant-Commander J. Besner

Lieutenant-Commander F. Gonsalves, Defence Counsel Services, Counsel for Pte L.I. Khan