

Case Summary
Office of the Judge Advocate General

DEFENDANT: SGT Evans
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 04 August 2023
VENUE: RAAF Base Edinburgh, SA

Charges and plea

| | Statement of Offence | Plea |
|----------|---|-------------|
| Charge 1 | DFDA, s. 34 Assaulting a subordinate | Guilty |
| Charge 2 | DFDA, s. 36A Unauthorised discharge of a weapon | Withdrawn |

Pre-Trial: Closed hearing and non-publication orders

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|-------------------|-----|
| Application made: | No |
| Determination: | N/A |

Trial: Facts and legal principles

Nil, as the case proceeded by way of a guilty plea.

Findings

| | Finding |
|----------|---------------------|
| Charge 1 | Guilty |
| Charge 2 | No Finding Required |

Sentencing: Facts and legal principles

Before the defendant was arraigned on Charge 2, the prosecuting officer applied to withdraw that charge. The defending officer did not object. Accordingly, the DFM allowed the prosecuting officer to withdraw Charge 2 pursuant to Rule 13 of the *Court Martial and Defence Force Magistrate Rules 2020*.

On 23 Jun 23, the defendant was the OIC Practice for a non-lethal training ammunition practice conducted at RAAF Base Edinburgh. The practice involved 'friendly forces' and an enemy party which included the complainant. The defendant wore a high-visibility vest over his uniform to identify himself. On two occasions, the complainant hit the defendant with paint rounds. On the second occasion, the defendant stopped the serial, called the complainant to come forward, grabbed a weapon from another participant and deliberately fired 7-10 paint rounds at the complainant.

The defendant was an extremely high performing and well regarded soldier. The character references tendered on his behalf were exemplary. He had served with distinction in operational theatres and was viewed by some as one of the finest SNCO's they had served with. The DFM held that his behaviour was unlikely to be repeated, his prospects for rehabilitation were good, that he was otherwise a person of impeccable character, that he was genuinely remorseful and could be dealt with as a first offender.

- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*

Notwithstanding the mitigating features, the DFM held that the defendant's behaviour was objectively serious and certainly not in keeping with service values. His behaviour displayed a lack of restraint, was a deliberate dangerous act committed in front of others subordinate in rank.

In order to satisfy the sentencing principles of general deterrence and maintenance of good order and discipline, the DFM held that the minimum punishment required in the circumstances was a reduction in rank, by one rank, to that of Corporal.

Punishments and orders

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|----------|--|
| Charge 1 | To be reduced to the rank of Corporal (CPL) with seniority in that rank to date from 01 January 2015 |
| Charge 2 | Not Applicable |

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 10 August 2023.

| | Conviction | Punishments / Orders |
|----------|-------------------|-----------------------------|
| Charge 1 | Upheld | Upheld |
| Charge 2 | Not Applicable | Not Applicable |

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