

Case Summary
Office of the Judge Advocate General

DEFENDANT: CPL Smith

TYPE OF PROCEEDING: Defence Force Magistrate

DATE OF TRIAL: 19 – 23 February 2024

VENUE: Blamey Barracks, NSW

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 34 Assaulting a subordinate	Not Guilty
Alternative to Charge 1	DFDA, s. 60(1) Prejudicial conduct	Guilty
Charge 2	DFDA, s. 34 Assaulting a subordinate	Guilty
Charge 3	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Not Guilty
Charge 4	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Not Guilty
Alternative to Charge 4	DFDA, s. 34 Assaulting a subordinate	Not Guilty
Charge 5	DFDA, s. 34 Assaulting a subordinate	Not Guilty

Pre-Trial: Closed hearing and non-publication orders

Application made:	Yes, by the Prosecution for a non-publication order in respect of the complainant's details for Charge 1 and the Alternative to Charge 1..
Determination:	The application was unopposed and was granted. While no orders were made under the DFDA, due to the nature of Charges 3 and 4, it is an offence to publish the details of the complainant in respect of Charges 3, 4, the Alternative to 4 and 5 under the <i>Evidence (Miscellaneous) Provisions Act 1991 (ACT)</i> .

Trial: Facts and legal principles

Nil, as the Alternative to Charge 1 and Charge 2 proceeded by way of guilty pleas.

Findings

	Finding
Charge 1	Not Applicable
Alternative to Charge 1	Guilty
Charge 2	Guilty
Charge 3	Not Guilty
Charge 4	Not Guilty
Alternative to Charge 4	Not Guilty

- *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.*

Charge 5	Not Guilty
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Sentencing: Facts and legal principles

On 21 May 23 trainee recruits were undertaking Army first aid training at Kapooka. The complainant in respect of the Alternative to Charge 1 and two other trainee recruits were in a room with the defendant. The defendant told a number of jokes before he turned towards the complainant and tapped her briefly on her thigh. The complainant did not consent to being touched.

In respect of Charge 2, the other complainant and her trainee recruit partner had just entered a room with the defendant to undergo retesting on CPR techniques. Upon entering the room the defendant realised he did not have the necessary paperwork and turned around to exit the room, verbally expressed his frustration and lightly shook the complainant's shoulders. The complainant did not consent to being touched.

The Prosecuting Officer conceded that the pleas of guilty were entered early, that both offences were not serious examples of such conduct and that defendant was entitled to be dealt with as a first time offender.

Additionally, the DFM took into account the character references tendered on behalf of the defendant, accepted that he was genuinely remorseful and had good prospects for rehabilitation. Consideration was also given to the victim impact statement.

In all of the circumstances, the DFM held that the principles of general deterrence and maintenance of discipline and good order could be satisfied by imposing a severe reprimand in relation to the Alternative to Charge 1 and a wholly suspended fine, coupled with a severe reprimand, in relation to Charge 2.

Punishments and orders

Charge 1	Not Applicable
Alternative to Charge 1	Severe Reprimand
Charge 2	To be fined the sum of \$500. Pursuant to DFDA s. 79, the Tribunal orders the suspension of the whole of the fine imposed. Severe Reprimand
Charge 3	Not Applicable
Charge 4	Not Applicable
Alternative to Charge 4	Not Applicable
Charge 5	Not Applicable

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 15 March 2024.

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	Conviction	Punishments / Orders
Charge 1	Not Applicable	Not Applicable
Alternative to Charge 1	Upheld	Upheld
Charge 2	Upheld	Upheld
Charge 3	Not Applicable	Not Applicable
Charge 4	Not Applicable	Not Applicable
Alternative to Charge 4	Not Applicable	Not Applicable
Charge 5	Not Applicable	Not Applicable

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