

Case Summary
Office of the Judge Advocate General

DEFENDANT: FSGT Cox
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 13 May 2024
VENUE: Court Martial Facility, Fyshwick, ACT

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 60(1) Prejudicial conduct	Guilty

Pre-Trial: Closed hearing and non-publication orders

Application made:	No
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Trial: Facts and legal principles

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

Findings

	Finding
Charge 1	Guilty

Sentencing: Facts and legal principles

On or about 25 November 2022, during the evening, members of 3 SQN were socialising in the outdoor spa of a hotel in Waikiki, Hawaii. Members of 3 SQN present during the relevant period included the defendant, an officer and a number of other subordinates. At approximately 2000hrs, the officer (who was also charged with the offence) hovered over the defendant's lap visible to other members. Other members then observed the defendant and the officer engage in intimate physical touching and flirtatious conduct whilst sitting within close proximity to one another in the spa. The defendant participated in a Digital Record of Interview on 12 July 2023 and made full admissions.

The Prosecution conceded that given the amendment to the particulars of the charge from "sexualised conduct" to "intimate conduct" for the defendant and the nature of the physical touching, the DFM could regard this example of prejudicial conduct as being at the lower end of the spectrum.

The DFM took into account a number of mitigating features in the defendant's favour, including; the early plea of guilty, his genuine remorse, his otherwise exemplary service of over 30 years and the numerous character references tendered on his behalf. Ultimately, the DFM was able to deal with the defendant on the basis that he was a first time offender who was very unlikely to reoffend and who had very good prospects for rehabilitation. The DFM also made clear that if he was dealing with the defendant for an act of a "sexualised" nature (as was the original wording of the charge before amendment) the penalty would have most likely been more severe.

- *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.*

In all of the circumstances, the DFM concluded that the minimum penalty required to satisfy the principles of general deterrence and maintenance of good order and discipline was a partly suspended fine of a not insignificant amount.

Punishments and orders

Charge 1	To be fined the sum of \$1,000.00. Pursuant to s. 79 DFDA, the Tribunal orders the suspension of \$500.00 of the fine imposed.
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Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 06 June 2024

	Conviction	Punishments / Orders
Charge 1	Upheld	Upheld

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