

Case Summary
Office of the Judge Advocate General

DEFENDANT: PO Doherty
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 13 June 2024
VENUE: Court Martial Facility, Fyshwick, ACT

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 61(1) Act of indecency without consent	Withdrawn
Alternative to Charge 1	DFDA, s. 34 Assaulting a subordinate	Withdrawn
Charge 2	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 61(1) Act of indecency without consent	Guilty

Pre-Trial: Closed hearing and non-publication orders

Application made:	Yes. The prosecution applied under the Evidence (Miscellaneous Provisions) Act 1991 (ACT), s. 50 for the hearing to be closed during the evidence of the complainant based on the nature of Charge 2.
Determination:	The application was unopposed and was granted. While no orders were made under the DFDA, due to the nature of Charge 2, it is an offence to publish the details of the complainant under the Evidence (Miscellaneous) Provisions Act 1991 (ACT).

Trial: Facts and legal principles

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

Findings

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

Sentencing: Facts and legal principles

The defendant was the appointed supervisor of the complainant on board a ship that was a participant in Exercise RIMPAC 2022. On 1 July 2022, the defendant and complainant were both on local leave in Waikiki, Hawaii and each consumed numerous alcoholic beverages over a period of several hours. The complainant had booked a room at a hotel to share with another colleague. The defendant asked the complainant if he could sleep on the floor of her room and she agreed. Between 2230 and midnight, the complainant and defendant arrived at the room before going for a swim. After the swim they returned to the room and the defendant changed in the bathroom first.

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The complainant then changed and found the defendant already asleep in her bed. Although annoyed, the complainant got into her bed. The defendant then attempted to cuddle or spoon the complainant on several occasions. The complainant told him to stop. Shortly thereafter, the defendant made two further attempts to initiate intimate contact. The complainant pushed him away and told him to leave her alone in very clear terms. In the early hours of 2 July 2022 the complainant was awoken by a feeling that something was not right. The defendant was using his open hand to touch the complainant beneath her clothing in an intimate area.

Despite being able to deal with the defendant as a first time offender, a member who had entered a plea of guilty at the first available opportunity and who was an individual of otherwise good character, the DFM regarded the offending conduct as objectively very serious. The DFM made it clear that had the defendant been convicted after trial, a period of imprisonment would have been ordered.

In order to give effect to the plea of guilty and other mitigating features, the DFM held that the least serious form of punishment that could satisfy the principles of general deterrence and maintenance of good order and discipline was dismissal from the Defence Force.

Punishments and orders

Charge 1	Not Applicable
Alternative to Charge 1	Not Applicable
Charge 2	To be dismissed from the Defence Force

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 04 July 2024

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

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