

Case Summary
Office of the Judge Advocate General

DEFENDANT: SMN Newell-Jarvis
TYPE OF PROCEEDING: Restricted Court Martial
DATE OF TRIAL: 05-06 November 2024
VENUE: HMAS *Stirling*, WA

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 26(2) Using insubordinate language	Guilty
Charge 2	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Not Guilty
Alternative to Charge 2	DFDA, s. 25 Assaulting a superior officer	Guilty
Charge 3	DFDA, s. 25 Assaulting a superior officer	Withdrawn
Charge 4	DFDA, s. 25 Assaulting a superior officer	Withdrawn
Charge 5	DFDA, s. 26(1) Engaging in insubordinate conduct	Guilty

Pre-Trial: Closed hearing and non-publication orders

Application made:	No.
Determination:	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 <i>Evidence (Miscellaneous) Provisions Act 1991 (ACT)</i> .

Trial: Facts and legal principles

The prosecution accepted a plea to the alternative to Charge 2 and withdrew two charges of assaulting a superior. Under s142(3) DFDA the charge of An act of indecency therefore did not proceed. The case proceeded by way of guilty pleas.

Findings

	Finding
Charge 1	Guilty
Charge 2	No finding required as prosecution accepted plea to the alternative charge. S142(3) DFDA.
Alternative to Charge 2	Guilty
Charge 3	Withdrawn
Charge 4	Withdrawn
Charge 5	Guilty

Sentencing: Facts and legal principles

- *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.*

On Friday, 18 August 2023, the victim, offender and another member of the RAN decided to have a night out in Brisbane to celebrate the offender's birthday. The three members headed to multiple venues in the city. Charge 1 concerned the offender using insubordinate language towards the victim after seeing a Snapchat message on her mobile phone. Charge 2 involved the offender touching the victim's thigh while Charge 3 concerned the offender entering the victim's room on base unannounced, loitering momentarily and then sending a text message shortly thereafter. In mitigation of penalty, the Defending Officer referred specifically to the offender's youth, early pleas of guilty, his otherwise good character, being able to be dealt with as a first time offender and genuine remorse.

As this was a RCM, the panel were not required to give reasons for imposing the punishments. By imposing the respective punishments, the panel concluded that they were the minimum required to satisfy the principles of general deterrence and need to maintain good order and discipline in the Defence Force.

Punishments and orders

Charge 1	Conviction without punishment
Charge 2	Not applicable
Alternative to Charge 2	Reprimand
Charge 3	Not applicable
Charge 4	Not applicable
Charge 5	Reprimand

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 25 November 2024.

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

- *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.*