

BEFORE THE DEFENCE FORCE
DISCIPLINE APPEALS TRIBUNAL

Coram: The Hon Xavier Connor AO QC President
The Hon Mr Justice Murray CBE Vice-President
His Honour Judge Broad DFC Member

REASONS FOR JUDGMENT

Delivered in the Supreme Court
at Townsville
18 March 1987

IN THE MATTER of The Defence
Force Discipline Appeals Act
1955

- and -

IN THE MATTER of an Application
for Leave to Appeal pursuant to
Section 21(1) of the Act.

- and -

IN THE MATTER of an Appeal
against conviction by Court
Martial of ROY DAVID SNEDDEN

REASONS FOR JUDGMENT

On 19 October 1986 a Restricted Court Martial heard five charges against the appellant, WOII Roy David Snedden. The Court acquitted the appellant on the 1st, 3rd and 4th charges but convicted him on the 2nd and 5th charges and sentenced him to a severe reprimand on each charge. He seeks leave to appeal to this Tribunal against his conviction on the 5th charge only. The Tribunal granted him leave to appeal out of time.

The 5th charge was that, in breach of s 26(1)(b) of the Defence Force Discipline Act, the appellant used insubordinate language about and in the presence of a superior officer. The particulars were as follows:

In that he at Pallarenda, Townsville, on 18 Sep 86, did in the presence of 217715 MAJ P.J. GOLDMAN, a superior officer, use insubordinate language about him by saying, 'I know who you are and I don't give a fuck because I will deny everything', or words to that effect.

The charges arose out of some incidents which occurred at Pallarenda Beach, Townsville on the afternoon of 18 September 1986. The appellant was in charge of a group of soldiers who had been attending a barbecue in the beach area. Major Goldman, who was the officer in

charge of a unit which was not the appellant's unit, spoke to the appellant near some army trucks. He then walked towards a staff car which was parked close by and asked the appellant to follow him. Captain Rosenbaum, the operations officer of Major Goldman's unit, was in the beach area nearby. On the way to the staff car Major Goldman called out to Captain Rosenbaum to join him.

Major Goldman gave evidence that on arrival at the staff car he opened the driver's door and removed his wallet which contained his identity card. He showed the card to the appellant in order to identify himself. He said: "I am showing you this so you will know who I am." He said that the appellant then said to him: "I don't give a fuck who you are" and some other words he could not recall. Major Goldman said that Captain Rosenbaum arrived at the staff car very shortly after that incident. He introduced Captain Rosenbaum to the appellant.

The appellant denied having said the words and said that when Major Goldman showed him his identity card he said: "I believe you are who you say you are". The appellant did not know at this stage where Captain Rosenbaum was but said that he appeared almost immediately afterwards.

Captain Rosenbaum said that when he arrived at the rear of the staff car Major Goldman produced his identity card to the appellant and at the same time Major Goldman introduced him to the appellant. The words of introduction were the first words he heard at the car. He also said that the appellant did not use the language the subject of the charge.

It is apparent that both Major Goldman and the appellant were in agreement that there was conversation between them immediately after the production of the identity card which Captain Rosenbaum either did not hear or did not remember. It was during this short but critical period that Major Goldman claimed that the relevant words were said. The conflict of evidence was highlighted by the defending officer in his final address and the learned Judge Advocate on two occasions adverted to it in his summing up.

The substantial ground of appeal is that the conviction on the 5th charge is unreasonable and cannot be supported having regard to the evidence. In support of this ground counsel for the appellant argued that Captain Rosenbaum must have heard everything which passed between Major Goldman and the appellant from the time the identity card was produced, that Major Goldman's evidence was that the insubordinate language was used after the production of the identity card and that consequently there was a direct conflict between the evidence of Major Goldman and that of Captain Rosenbaum whose version supported the appellant. Captain Rosenbaum, it was argued, was unknown to the appellant but was well known to Major Goldman and was his junior officer. In the circumstances a reasonable court properly instructed must have had a reasonable doubt.

Counsel for the respondent submitted that much of Captain Rosenbaum's evidence was tentative and that it was open to the Court to take the view that the words in question were spoken just before he came into earshot and that he was mistaken in thinking that he had actually arrived at the car when Major Goldman produced his identity card.

In our opinion, notwithstanding that there was some discrepancy between the accounts of Major Goldman and Captain Rosenbaum, it was open to the Court to be satisfied beyond reasonable doubt that the words complained of were spoken by the appellant. Indeed it appears from the appellant's own evidence that at the car other words were spoken between Major Goldman and the appellant which Captain Rosenbaum did not hear. There was no complaint in relation to the summing up of the learned Judge Advocate.

For these reasons we dismiss the appeal.

Samuel L. ...
President