

reported the accident to them when it first happened.

Was with 48 B about 7 or 8 mos. - had left them only shortly before - had gone to hospital with fever about 20 days before I joined 2nd.

I remember Sgt Ferner telling me not to go away. Was present at assembly area & did not notice any shellfire.

Re-exam: nil

Court: - Was with 48 B at Ortona when front static & in Gothic line. Missed Hitler line as in hospital with jaundice. Was knocked out by blast in Gothic line. Went to hospital with fever, 48 B down in rest. Came out of hospital & posted to 2nd.

Figured would be given stiff sentence so decided to take a holiday.

Remember night 20 Dec, truck ride & assembly area. I knew we were going somewhere but did not know where. There was some shellfire over to our right.

Had been drinking that day - was not drunk but feeling good - was drinking wine.

While I & 2 had been out drinking & on way home were scuffling - I pushed him & a se car came by & hit him. I didn't hear the car coming or wouldn't have shoved him - was worried about how he was.

RP 83 (B) complied with.

Def closed.

Pros in closing: - acesd present when Pl waived moving fwd - acesd present at debussing area & FUP - not present later when Pl checked by Sgt. Area under shellfire. Did not report injuries to anyone but took things in own hands. Had previous battle experience - not drunk - decided to leave to search for friend - soldiering long enough to know score. Evidence clear acesd threw going into action & did not return for some 45 days.

Def offer: - acesd left Pl according to chg when under shell fire. Possible for man to get into such mental state that does not care what happens to himself. Acesd not afraid of battle.

JA sums up: - Fact finding function, credibility of witnesses, presumption of innocence, burden on provt, reasonable doubt, intent, acesd, desertion, AASB & RP 44 (D), judicial notice.

Def offer in mitigation: - acesd has no serious charges on conduct sheet - ask consideration as given to his mental state of mind.

WMW Shaw
- capt.