

A. Well no, I couldn't say that, Sir, I don't remember them word for word.

Q. Can you state for a fact if the Guard Commander's orders were available on the night of 26 Aug?

A. Well, no, Sir.

NO RE-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THE PROSECUTOR STATED THAT L/SJT ROSS WHO WAS THE GUARD COMMANDER ON THE NIGHT OF 26-27 AUG WAS NOT AVAILABLE AS A WITNESS AS HE HAD BEEN RETURNED TO CANADA WHERE HE STILL IS.

THE PROSECUTION IS CLOSED

-D E F E N C E-

THE PRESIDENT READ THE WORDS OF RECORD FORM "D5" TO THE DEFENDING OFFICER WHO STATED THAT THE ACCUSED WOULD MAKE A STATEMENT NOT UNDER OATH.

STATEMENT BY THE ACCUSED

The accused, A.28506 Gnr Alva Franklin WEAVER, 1 CSRU, makes the following statement not under oath:

On the night of the 26-27 Aug while I was standing guard, it would be somewhere around 2.15 or 2.30 in the morning, I was walking back and forward in front of the Delville Offra Gate. I remember my rifle slung over my right hand shoulder. When I went to change my rifle over to my left shoulder my hand slipped on the sling which brought it around in an arc. I had hold only of the sling and as the rifle was coming around it went off balance. I then grabbed the rifle itself with my right hand against my right leg above the knee. I was walking towards the sentry box whilst doing this when the explosion occurred. I don't know what touched the trigger. After the explosion I went down on the ground as my left leg seemed useless and when I could not get up I called for help. Someone came out of the building who helped me inside the sentry box. Then Mr Carson came along, gave me first aid, and I was later moved into the kitchen by the both of them. I did not wilfully injure myself. I had just come in from the field to CSRU where I had been on guard duties with the 2nd Heavy AA. While on guard duty with that unit the instructions were to keep a rifle loaded. It is possible that I loaded my rifle without thinking while on guard duty that night. I did not have anything to drink before coming on duty. Shortly around the 1st Sep 43 I had planned to get my leave.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

ADDRESS TO THE COURT ON THE FINDING BY THE PROSECUTOR

Considering the evidence of the witnesses we had there are 2 definite points and one is that the ammunition was in the rifle which is contrary to Standing Orders, and secondly that he was not carrying the rifle in the right position according to Standing Orders. Gnr Weaver was aware of these facts and from these 2 points it seems to me that he was negligent, thus causing his rifle to be discharged into his left foot.

DEFENDING OFFICER ADDRESSES THE COURT ON THE FINDING

I don't believe there is any evidence in the records to show that Gnr Weaver was carrying his rifle at the slung position, also there has been no evidence brought forth that Gnr Weaver had seen the Guard Standing Orders or had them read to him. Reference the first charge there is no evidence to say that he wilfully injured himself and reference the second charge, there is no evidence to show or to prove the word neglect which is an essential part of the second charge, and consequently I fail to see where Gnr Weaver is guilty on either charge.

MM