

Closing address of the Defence

Sirs, it is up to the prosecution to prove that an order was issued and that the order was communicated to the accused. In my mind there is a doubt that a direct order was given to the accused. There was a discussion and it may have been left at you had better do it but an order of that sort is not enough to satisfy the requirements of the Army Act. In so far as Mr. McQuarrie issued the order from 25 yds away I think we can dismiss that for a man not more than 15 yds away did not hear him. Tpr Lyons states he did not hear an order and there is every reason to believe he is telling the truth. Whether Mr. McQuarrie came up to the accused and gave direct order to go back is questionable. His evidence and statement in the summary do not jibe in all particulars. Assuming that he did give an order, Tpr Lyons did go to where the rest of the tp were, and that was in the meal parade. The rest of the tp, while this conversation was going on had finished their job and lined up so it would appear that Tpr Lyons carried out the order. This is a very serious charge against the accused and I submit that it has not been proved by the Prosecution.

Closing address of the Prosecution

Sir, there are two or three remarks which I would like to make. The crux of the whole argument rests on three points. The first point is what actually passed between Mr. McQuarrie and the accused and that is for the courts decision. The Defence has tried to establish that Mr. McQuarrie shouted and included in that shout and order to return and then Mr. McQuarrie came up and said to Lyons, I gave you an order why did you not obey. Mr. McQuarrie states that he simply shouted Lyons to attract his attention, and apparently Lyons heard something. He then went up and said come back to where the rest of the tp were and Lyons just looked at him then the remainder of the conversation ensued. The deciding factor is where the order was given whether 25 yds away or right on the spot. I suggest that it was given face to face for this reason that I don't believe that any officer is going to stand a distance away and shout Lyons come back to where the tp is. It would stand to reason that he said the one simple thing "Lyons" and then walked over to where he was and gave him the order. The next point is that when this order was given face to face, Tpr Lyons did nothing and Mr. McQuarrie said what is the matter with you and there was a reasonable lapse of time, because no officer is going to order a man back and then engage him in conversation. The generally expected thing when an officer gives an order is that he replies yes sir, which is acquiescence, and in this case nothing was said and the man did nothing. I strongly contend that the order was given and there was a sufficient lapse of time for it to be carried out. The third point is whether it was possible for him to obey. I suggest that at the beginning of the conversation he certainly could have obeyed the order and the men were back somewhere near the tank. When the conversation had finished the men of the tp had passed by and were on the way to the meal parade and he walked towards the meal parade and that if he obeyed the order when given he would have walked away from the meal parade. L/Cpl Graham says that Lyons was behind him in the parade and Mr. McQuarrie two behind that. Mr. McQuarrie said that he had walked over to see his Sqn Comd and he came back and by that time the meal parade had formed up and his tp was in line. I submit that the case has been proved against the accused, that he did not obey the order and had sufficient time in which to carry it out.

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