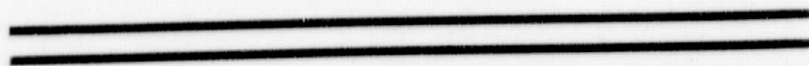
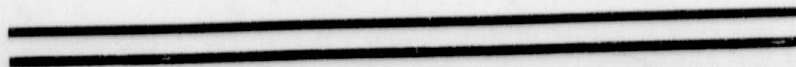
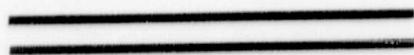


44.44

START



FIRST



SIDE

JJJ-130

PTE- KUPLUK w.w

Correspondence to be PINNED here.

CERTIFIED TRUE COPY

R. Bourdeau CAPT
(R. BOURDEAU.)

Original

VJ-132

Army Form A.3.

**Form for Assembly and Proceedings of Field
General Court Martial on Active Service.**

PROCEEDINGS.

A.

On Active Service, this Nineteenth day of March, 1944.

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Infantry Brigade

(36)

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer]

"EMH"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [I am unable to appoint:]

*(1) ~~Three Officers to form the Court;~~

*(2) ~~A Field Officer as President;~~

"EMH"

for the following reasons, namely:—

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may also be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.		
Rank.	Name.	Regiment.
Major	H.A. Tucker	L Edmn B
Members.		
Rank.	Name.	Regiment.
Capt	A.M. Johnson	L Edmn B
Lieut.	L.F. Hanson	L Edmn B
(W) Lieut.	R.L. Arthur	L Edmn B

*Must be signed personally by the Officer actually so constituted at the time, and all alterations in the composition of the Court to be initialed by him.

*Signed "B.M. Hoffmeister"
Commanding (B.M. Hoffmeister) Brig
Convening Officer.
2 Cdn Inf Bde.

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B59037 Private KUPLUK, William Wilfred.	<u>First Charge</u> A.A. Sec 17(1) When on active service, Absenting himself without leave.	Guilty	Guilty	I confirm the finding and sentence of this court "RT"
Princess Patricia's Canadian Light Infantry	<u>Second Charge</u> A.A. Sec 17(1) When on active service, Absenting himself without leave.	Guilty	Guilty To undergo 9 mos imprisonment with hard labor "RT" 22 Mar 44	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :-

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary) :-

(Signed) "C. B. Ware" (Signed) "H. A. Tucker Major"
(C. B. Ware) Lt-col.
T/ Commanding 2 Cdn Inf Bde
Confirming Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialed by him.

Evidence and Charge Sheets (if necessary)
to be PINNED here.

3

I certify that the above Court assembled on the 22nd day of March, 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :-
1. The members of the Court
2. The witnesses
*3- The Interpreter
*4- The officers under instruction

*Omit if not applicable

were duly sworn. 22nd day of March 1944
Signed this
"E. A. Tucker Major"
President of the Court Martial.

C.
Certificates in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. 19
Signed this _____ day of _____
President of the Court Martial.

*See footnote 10 on page 702 M.C.I. 1929.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. Confirmation.

D.

*To be omitted unless general certificate, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barracks, or having such authority recommends suspension.

*I direct that the soldier named in the margin be not committed to prison or detention barracks and further orders. "C.M."
Signed this 23rd day of March 1944
"C.B. Ware, Lt.col (C.B. Ware) Lt.-col
Confirming Officer 1/Comd 2 Cdn Inf Bde

- Promulgated and extracts taken in the case of B99037 Pte Kupluk, E.W. (Signed)
- (a) (Dated) 24 March, 1944 (Signed)
- Promulgated and extracts taken in the case of (Signed)
- (Dated) _____ (Signed)
- Promulgated and extracts taken in the case of (Signed)
- (Dated) _____ (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 22nd day of March, 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

B.
Certificate of President as to proceedings

I also certify that :-

- 1. The members of the Court
- 2. The witnesses
- *3. - The Interpreter
- *4. - The officers under instruction

*Omit if not applicable.

were duly sworn.

Signed this 22nd day of March 1944.

"H.A. Tucker Major"
President of the Court Martial.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 762 M.M.L. 1929.

C.
Certificate in case of death sentences.

Signed this _____ day of _____ 19____.

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

D.
Confirmation.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Centronic Officer either has no authority to commit to prison or detention, barrack, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~ "CBW"

Signed this 23rd day of March 1944.

"C.B. Ware, Lt.col
Confirming Officer. (C.B. Ware) Lt.-col
2/Comd 2 Cdn Inf Bde

Promulgated and extracts taken in the case of B59037 Pte Kupluk, W.W.
(a) (Dated) 24 March, 1944 (Signed) "R.W. Potts, Capt"
Adjutant, P.F.C.S.I.

Promulgated and extracts taken in the case of
(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of
(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, B59037 Private William Wilfred KUPLUK, Princess Patricia's Canadian Light Infantry, a soldier of the Canadian Army Active Force, C.M.F., is charged with, when on Active Service:-

1st Charge
A.A. Sec 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 1800 hrs 29 Feb 44 until apprehended by the Military Police at SERRACHIOLIA, at 2000 hrs 20 Feb 44. (absent 6 days 2 hrs)

2nd Charge
A.A. Sec 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 1100 hrs 2 Mar 44 until 1300 hrs 2 Mar 44 (absent 2 hrs)

In the Field
12 Mar 44

"C.B. Ware"
(C.B. Ware) Lieut-Col.,
Commanding, P.P.C.L.I.

To be tried by P.G.C.M.

Field
19 Mar 44

"B.M. Hoffmeister"
(B.M. Hoffmeister) Brig.,
Comd., 2 Cdn Inf Bde.

"NT"

MEDICAL CERTIFICATE

This is to certify that I have this day
examined No. B59037 Private William Wilfred BOWLER,
Princess Patricia's Canadian Light Infantry, and find
him fit to undergo trial by Field General Court Martial.

"D. J. Hastings"
Medical Officer

In the Field
22 Mar 44.

"HTB"

MEDICAL CERTIFICATE

This is to certify that I have this day
examined No. 359037 Private William Wilfred KUPICK,
Princess Patricia's Canadian Light Infantry, and find
him fit to undergo trial by Field General Court Martial.

In the Field
22 Mar 44.

"D.J. Hastings, Capt"
Medical Officer.

PAGE 1

Accused B59037 Pte William Wilfred KUPPER F.P.C.L.I.
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in ITALY on 22 March 44
(Country) (Date)

Rank Name Unit
PRESIDENT: Major H.A. Tucker L. Edmonton Regt

MEMBERS: Capt A.M. Johnson L. Edmonton Regt

Lieut E.F. Hanson L. Edmonton Regt

JUDGE ADVOCATE: N/A
(If any)

OFFICER IN CHARGE: N/A
INSTRUCTION: _____

PROSECUTING OFFICER: Capt A.S. Banks Smith Lawyer? Ans No

DEFENDING OFFICER: Capt L.G. Burton Lawyer? Ans No

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (R.P. 17(E), 22(A)).

The President, in closed court (R.P. 22, Fnl), reads the Convening Order and the Charge sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A. 49; R.P. 105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P. 106)

The accused is (are) brought before the Court, and at 1100 hours, the trial commences.

The prosecuting officer produces a Medical Certificate under R.R. (Can) 557 (See CHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused:
Do you object to N/A as interpreter? Ans _____

The interpreter is duly sworn.

Do you object to N/A as shorthand writer? _____

The shorthand writer is duly sworn. (Forms of Oath on Page 'D').
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P. 10)

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P. 26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(B))

(If special plea/s is/are made for separate trial on one or more charges (Rs P 62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130; R.P.57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge	<u>Guilty</u>	Fifth Charge	_____
Second Charge	<u>Guilty</u>	Sixth Charge	_____
Third Charge	_____	Seventh Charge	_____
Fourth Charge	_____	Eighth Charge	_____

(For procedure on alternative charges, see R.P. 37, fn2)

Further proceedings are recorded on Pages hereto attached.

(For use when accused pleads guilty to all charges)

All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:

Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(B) and No

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination on thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P. 37(B)).

4. President to accused:

Do you wish to make any statement in mitigation of punishment? (R.P.37(C)). Ans Yes

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination)

5. President to accused:

Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C)). Ans No

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (R.P.46), signed in the manner required by A...163(i) (h) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked "C", and "D", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.O. 3131)

7. President to accused:

Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans Yes (No cross-examination) (Record address, if ANY, on separate sheet, initialled by the President and attached hereto)

8. The Court is now closed to consider sentence. (Record on Page 2 of F.A.3) (Punishments, A.A.44, K.R. (Can)565-566; one sentence only awarded, R.P.487. sentence should be dated)

The sentence is not announced to the accused by the Court.

"D.A. Tucker, Major"
(Signature of President)

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President)

1. President to accused:
2. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P.39(A)). Ans _____
2. The Prosecutor's opening address(if any) (R.P.39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D')
3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P.40 fn 1; R.P.70 fn1)
4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (R.P.40(D)(1)(a)).
5. President to accused:
2. Do you apply to give evidence yourself as a witness? Ans _____
3. Do you intend to call any other witness in your defence? Ans _____
2. Is he a witness as to character only? (R.P.40(B) ans _____
6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.
7. The closing addresses of the Prosecutor, Defending Officer and Judge-advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see Rs P 40, 41 and 42)
8. The Court is now closed to consider the finding (Rg P 43 and 117)
9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. R.P. 117(B)
10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (A.F.A.6) signed in the manner required by A.A.163(1)(h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings, (R.P.46: Overseas R.O.3132)
11. President to accused:
- Q. Do you wish to address the Court on the statements of Character Service and Conduct and in mitigation of punishment? (R.P.46(D)).
Ans _____ No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto)
12. The Court is now closed to consider the sentence (Record on Page 2 A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.46); sentence should be dated.

The sentence is not announced to the accused by the Court.

(Signature of President)

(For use when there are pleas of 'Guilty' and 'Not Guilty')

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, in respect to 'Guilty' pleas, by the President ascertaining that accused understands the nature of the charge(s) (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P.37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or that you have not had sufficient time for preparing your defence? (R.O.39(A). Ans _____

3. The Prosecutor's opening address (if any) (R.P.39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President, and attached hereto. (See Record of Evidence on Page 'D')

4. The Prosecution is closed. (If submission that no prima facie case established; see R.P. 40 fn 1; R.P. 70 fn 1)

5. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination. (R.P. 40, fn 2) or that he may, if he wishes make an unsworn statement upon which he can not be cross-examined. (R.P. 40(D)(ii)(a)

6. President to accused:

Q. Do you apply to give evidence yourself as a witness? Ans _____

Q. Do you intend to call any other witness in your defence? Ans _____

Q. Is he a witness as to character only? (R.P. 40(B) Ans _____

7. The evidence for the defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

8. The closing addresses of the Prosecutor, Defending Officer and Judge-advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses, see Rs P. 40, 41 and 42)

9. The Court is now closed to consider the finding. (Rs P 43 and 117) (Record Finding on Page 2 of A.F.A.3)

10. The Court being re-opened, the accused is again brought before it and the findings of 'Not Guilty' (if any) are pronounced. (R.P.117(B))

11. The charges, to which the accused pleaded 'Guilty' are read to the accused.

12. President to accused:

Q. Do you desire to make any statement of the circumstances in reference to the charge(s) to which you have pleaded 'Guilty'? (R.P.37(B) Ans _____

(Statement (if any) not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

13. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If not such Summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings) (R.P.37(B)).

PAGE 'C' CONTINUED

14. President to accused:

Do you wish to make any statement in mitigation of punishment?

(R.P.37(C) Ans _____

No cross-examination.

(Statement (if any) is recorded on separate sheet, initialled by the President and attached hereto)

15. President to accused:

Do you wish to give evidence yourself or call witnesses as to character? (R.P.37(C) Ans _____

16. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163(1)(h) and purporting to refer to the accused by his number (if any), rank, name, and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.P.46; Overseas R.O.6131)

17. President to accused:

Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (R.P.46(D).

Ans _____ No Cross-examination.

(Record address (if any) on separate sheet, initialled by the President and attached hereto)

18. The Court is now closed to consider the sentence. (Record on Page 2 of A.F.A.3)

(Punishments; A.A.44; K.R.(Can)563-566; one sentence only awarded, R.P.48. Sentence should be dated)

The sentence is not announced to the accused by the Court.

(Signature of President)

Flea of Mitigation by Defendant

While in the Field, I was having a lot of trouble with my stomach. I reported to the M.O. several times asking, if possible, to get a re-board. He would have nothing to do with me, Sir. I was also taking treatments for V.D.S.. I could not get them regularly. I went without it 2 weeks & more at times. I paraded before the Capt. & asked him why I could not get my treatments. He told me he would look into it. I waited 2 days & went up to see the Major. I asked to be paraded to the Col. I told him(The Major) why I wanted to see the Col. He said the Col. was busy & and that he(The Col.) would have nothing to do with me, meanwhile, I got a 48 Hr. leave into Ortona. After the 48, I went L.O.B. while on L.O.B. in Ortona, I ran into my brother in the American Army who was stationed outside of Foggia. Speaking to him, he told me about things back home & I hadn't received any mail for about 10 months. He told me that my mother & father had seperated. Also my oldest brother had been shot down over Czechoslovakia on a raid. He was in the American Army. I was drinking pretty heavy I stayed with my brother a few days in Foggia. Then I was picked up by the M.P.'s on my way back to the regiment, intoxicated.

Mitigation of Character & particulars of Services *(Statement by Defendant)*

As far back as I can remember, since I was about 10 or 12, while I was still going to school, I've been beat about a lot. Why, I don't know. A few years later, I found out the past, my father & mother. I had been told I had no father. So I didn't say anything at the time. I finished Public School. My father made me go out & work. While working at \$10.00 a month, I met a few other chaps who were in the same ~~business~~ as I was in. I met these chaps & I got myself into trouble. I was sent to jail for 4 years. I got out 4 Sep 41, went home & the next day I joined the army. I had started drinking heavily & I've kept it up. My troubles in the army have followed from this heavy drinking.

Summary of Evidence in the case of W2037 See M.I.R., p. 1.

W2037, M.I.R., p. 1.
The commanding officer directs that the evidence be taken on oath.

First witness
H-16562 C.S.M. Cassella, M.C. "M" Coy R.F.C.L.I. having been duly sworn states:

I am H-16562 C.S.M. Cassella M.C. "M" Coy R.F.C.L.I. My evidence on the accused's first charge is as follows, on the 14th Feb 1944 the accused the Koplink was being on a 48 hrs pass. I told him he would be left out of battle formation on his return for 4 days. He would then return to his Coy at 1500 hrs on 20 Feb 43 with the ration party. My evidence on the accused's second charge is as follows. The accused was returned to me on the night of 1 Feb 44 on the following morning 2 Feb 44 I told the accused he would be on command orders at 1500 hrs. Upon falling in the order parade, the Koplink was absent. I did not see him until 1500 hrs on 2 Mar 44 I placed him under close arrest.

M.P. 4 (a)

The accused declines to cross-examine the witness

2nd witness
H17013 Sgt Smeets C.D. "M" Coy, R.F.C.L.I. having been duly sworn states:

I am H17013 Sgt Smeets C.D. "M" Coy R.F.C.L.I. On the accused's first charge my evidence is as follows. The accused is a member of my platoon. On the day of 20 Feb 44 the C.S.M. informed me that the accused would return to his platoon from the "Lost" out of battle formation at 1800 hrs on that date. He did not return. I reported his absence to the C.O.

M.P. 4 (a)

The accused declines to cross-examine this witness

Third witness
For the Prosecution
H685222 Sgt Smeets, V.C.M. Police.

I certify that in my opinion the attendance of H685222 Sgt Smeets, V.C.M. Police is owing to the exigencies of the service not readily procurable and a written statement of his evidence, signed by him has been read to the accused and is attached hereto as Exhibit "A"

"W.C. Bennett, Captain
Officer detailed to take Summary

The accused was cautioned as follows:
Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

(M.P. 4 (b))

Sheet (3)

The accused declines to give evidence on oath or make a statement

The accused does not call any witness for the defence.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

"L.S. Beamish, Capt"
F.P.C.L.I.

In the Field
11 Mar 44

Correspondence to be PINNED here

RECORDED AT CMHQ IN AD 160 JJJ-136

Army Form A.3



Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Nineteenth day of March, 1944.

Order convening the Court.

F63

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Infantry Brigade

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

86

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer];

Bully

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [Inamenable to appeal:—

~~(1) Three Officers to form the Court.~~

~~(2) A Field Officer as President.~~

Bully

for the following reasons, namely:—

PROCEEDINGS REVIEWED 9 May 44

W. C. Smith
Lieut.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

JW

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event the ranks, names, &c. of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	H. A. Tucker	L. Edm R

Members.

Rank.	Name.	Regiment.
Capt.	A. M. Johnson	L. Edm R
Lieut.	H. P. Hanson	L. Edm R
(W) Lieut.	B. L. Arthurs	L. Edm R

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed B.M. Hoffmeister
(B.M. Hoffmeister) Brig
Commanding 2 Cdn Inf Bde.
Convening Officer.

F63

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B59037 Private KUPLUK, William Wilfred.	<u>First Charge</u> A.A. Sec 15(1) When on active service,			<i>See para R6</i> <i>finding and sentence of this court.</i> <i>C.B.W.</i>
Princess Patricia's Canadian Light Infantry.	Absenting himself without leave.	<i>guilty</i>	<i>Guilty -</i> <i>6 weeks' confinement.</i>	
	<u>Second Charge</u> A.A. Sec 15(1) When on active service,			<i>To receive 90 days' imprisonment with hard labour.</i> <i>22 Mar 44.</i>
	Absenting himself without leave.	<i>guilty</i>	<i>Guilty</i> <i>3 mos' confinement.</i>	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :-
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :-

(Signed) *C.B. Ware*
(C.B. Ware) Lt.-col.
T/Commanding 2nd Cdn Inf Bde.
Confirming Officer (e) President.

- (a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
- (b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
- (c) Recommendation to mercy, if any, to be inserted in this column.
- (d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
- (e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialed by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the day of *March* *22nd*, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :-
1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this *22nd* day of *March* 19*44*.

C.A. Pender
President of the Court Martial.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. **C.** Certificate in case of death sentences.

Signed this _____ day of _____ 19 _____.

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) *W.W.*

Signed this *23rd* day of *March* 19*44*.

C.B. Ware
Confirming Officer. (C.B. Ware) Lt.-col.
T/Command 2nd Cdn Inf Bde

Promulgated and extracts taken in the case of *B59037 Pte Kupluk, W.W.*
(a) (Dated) *24 March, 1944* (Signed) *W.W. Kupluk*
Adjutant, P.F.C.L.C.

Promulgated and extracts taken in the case of
(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of
(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

C H A R G E S H E E T

The accused, B59037 Private William Wilfred KUPLUK, Princess Patricia's Canadian Light Infantry, a soldier of the Canadian Army Active Force, C.M.F., is charged with, when on Active Service:-

1st CHARGE
H.A. Sec 15.(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 1800 hrs 20 Feb 44 until apprehended by the Military Police at SERRACAPRIOLA, at 2000 hrs 26 Feb 44.
(absent 6 days 2 hrs)

2nd CHARGE
H.A. Sec 15.(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, whilst ~~under~~ⁱⁿ open arrest, absented himself without leave from 1100 hrs 2 Mar 44 until 1300 hrs 2 Mar 44 (absent 2 hrs)

In the Field
12 Mar 44

C.B. Ware
(C.B. Ware) Lieut-Col.,
Commanding, P.P.C.L.I.

To be tried by F.G.C.M.

Field
19 Mar 44

B.M. Hoffmeister
(B.M. Hoffmeister) Brig.,
Cmd., 2 Cdn Inf Bde.

Accused 059007 Pfc William Alfred Loggins P.P. 613
(No) (Rank) (Christianity Name) (Service) (Unit)

Held in the field in Italy on 20 March 44
(Country) (Date)

Rank Name Unit
PRESIDENT: Major W.D. Parker 1. Edenton Regt.

MEMBERS: Capt. A.W. Johnson 1. Edenton Regt.
Lt. H.D. Hansen 1. Edenton Regt.

JUDGE ADVOCATE: N/A

(if any)

OFFICERS UNDER

INSTRUCTION: N/A

PROSECUTING OFFICER: Capt. A.J. Cross Smith Lawyer? Ans No

DEFENSE OFFICER: Capt. L.J. Carter Lawyer? Ans No

(The following procedure must be actually carried out)

The President produced the convening Order, Charge Sheet and Summary of Evidence. (AR 17(1), 22(1)).

The President, in closed court (AR 22, fn 1), reads the convening Order and the Charge Sheet(s) to the members, and the court satisfy themselves that it is properly convened (AR 49; AR 105) and constituted that the accused is not amenable to Military Law, and that each charge discloses an offense. (AR 105).

The accused is (not) brought before the Court, and at 1100 hrs, the trial commences.

The Prosecuting Officer produces a Medical Certificate under AR (Gen) 557 (See GRC Circular Letter 173) that the accused is (not) fit to undergo trial by Court Martial. The certificate is initialed by the president and attached to the proceedings.

President to accused:
Do you object to N/A as interpreter? Ans _____

The interpreter is duly sworn.

Do you object to N/A as shorthand writer? Ans _____

The shorthand writer is duly sworn. (Form of oath on page 'D')
The convening Order is read in the hearing of the accused.
The names of the president and Members of the Court are read to the accused (AR 10)

DEFENSE TO ACCUSED
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans N/A

The President, Members, Judge Advocate and Officers under instruction are duly sworn (AR 10-27 (Form of Oath on page 'D')).

The Charge Sheet is (not) initialed by the President.

The Prosecuting Officer informs the Court that the accused ~~is~~ ^(has) not elected trial by Court Order (AA 46(3)).

(If special plea/s is/are made for separate trial on one or more charges (RA 62(E), 108); or as to the jurisdiction of the Court (E 34); or in bar of trial (E 36); or as to accused's mental fitness to stand trial (AA 150, E 57); record such plea and evidence (if any) on paper to sheet/s to be initialed by the President and attached to the proceedings.

Each Charge is read to the accused and he is asked if each charge is read whether he pleads guilty or not guilty (V 112) He pleads as follows:

First Charge	<u>Guilty</u>	Fifth Charge	_____
Second Charge	<u>Guilty</u>	Sixth Charge	_____
Third Charge	_____	Seventh Charge	_____
Fourth Charge	_____	Eighth Charge	_____

(For procedure on alternative charges, see RT 37, para 3)

Further proceedings are recorded on pages hereto attached.

MEDICAL CERTIFICATE

This is to certify that I have this day
examined No. B59037 Private William Wilfred KUPLUK,
Princess Patricia's Canadian Light Infantry, and find
him fit / ~~unfit~~ to undergo trial by Field General
Court Martial.

In the Field
22 Mar 44.

D. Hastings Capt
Medical Officer.

FORM 100

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialed by the president).

1. If 35(a) is complied with, by the president ascertaining the accused understands the nature of the charge/s (see 3) and his plea thereto, explaining the difference in procedure by the plea (AR 37(D)) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. PRELIMINARY TO ACCUSED

3. Do you wish to make any statement in mitigation of punishment in reference to the charge/s? (AR 37(D)) Ans.....*Yes*.....

(Statement, if any, not taken is recorded on separate sheet, initialed by the president and attached hereto, Accused is not subject to cross-examination thereon.)

3. Summary of Evidence is read aloud, in the presence of the accused initialed by the president and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialed by the president and attached to the proceedings (AR 37(D)).

4. PRELIMINARY TO ACCUSED

3. Do you wish to make any statement in mitigation of punishment (AR 37(D)). Ans.....*Yes*.....

(Statement, if any, is recorded on separate sheet, initialed by the president and attached hereto, Accused is not subject to cross-examination thereon.)

5. PRELIMINARY TO ACCUSED

3. Do you wish to give evidence yourself or call any witnesses as to character? (AR 37(D)). Ans.....*Yes*.....

(Such evidence, confined to character only, is recorded on separate sheet, initialed by the president and attached hereto.)

6. Statement of Character and Service (AR 296) Field Conduct sheet (MFR 5) signed in the manner required by AR 165-1(i) (h) and pertaining to refer to the accused by his number (if any), rank, name and Service, are produced to the court, read, marked "C" and "D", initialed by the president and attached to the proceedings. (AR 16; GVS-200 3151).

7. PRELIMINARY TO ACCUSED

3. Do you wish to address the court on your Statement of Character and Service and conduct in further mitigation of punishment? (AR 46(D)). Ans.....*Yes*..... (If cross-examination). (Record address, if any, on separate sheet, initialed by the president and attached hereto.)

8. The court is now closed to consider sentence. (Record on page 2 of AR 3).

(Punishments, AR 48, (Gen) 563 - 566; one sentence only awarded, AR 48). Sentence should be set.)

The sentence is not announced to the accused by the court.

La. Tucker
1954 CURR OF FOR 100

Ex. "B"

H.

Plea, Mitigation by Defendant

While in the field, I was having a lot of trouble with my stomach. I reported to the U.O. several times asking, if possible, to get a re-board. He would have nothing to do with me, sir. I was also taking treatments for V.O.S. I could not get them regularly. I went without it 2 weeks & more at times. I persuaded the Capt. & asked him why I would not get my treatments. He told me he would look into it. I waited 2 days & went up to see the major. I asked to be persuaded to the Col. I told him (the major) why I wanted to see the Col. He said the Col. ~~was busy~~ & that he (the col.) would have nothing to do with me. Meanwhile, I got a 48 hr. leave into Ootona after 78, I got L.O.B. while on L.O.B. in Ootona, I was entering but I was in the American army when he was stationed outside of Toggia. Speaking to him, he told me about things back home. I had not received any mail for about 13 months. He told me that my mother & father had separated. Also my oldest brother had been shot down over Ceylon Island on a raid. He was in the American army. I was drinking pretty heavy. I stayed with my brother a few days in Toggia. Then I was picked up by the M's on my way back to the regiment, interned.

Mitigation, character & particulars serving
 (Statement by defendant) ~~is contained in 4466-4478~~
 256.

As far back as I can remember, since I was about 10 or 12, while I was still going to school, I've been beat about a lot. Why, I don't know. A few years later, I ~~found~~ ^{found} out the party of father & mother. I had seen what I had no father. So I didn't say anything at the time. I finished public school. My father made me go out to work while working at 90¢ a month, I met a few other cheap workers in the same situation as I was in. I got these cheap. I got ~~to~~ myself into trouble. I was sent to jail for 4 years. I got out 4 Sep 41, went home, & the next day I joined the army. I had started ~~to~~ drinking heavily & I kept it up. My friends - The army has followed from this heavy drinking.

P.T.O.

PRINTED AND MANUFACTURED BY THE GOVERNMENT OF INDIA

Adjutant

By whom Awarded

X

Punishment Awarded

Squadron, Troop or Company

Signature of O.C. Battery

Bestowed on (Date, Secy, 102 (114)) R.R. Offical

7690855. Ck. MAWRANCE. G. C.M. Police.
7695227 SGT. BURET. R. C.M. Police.

Names of Witnesses

90th 100th Field Companies

Rank

[Signature]

Absent from unit apprehended by the military Police at SERREPRENOIS at about 2000 hours on the 26 FEB 1944.

OFFENCE W.C. 19.5.

Place of Offence

FIELD

Name

KUPUCK, W.W.

CHARGE against No. B.59087 Rank

1st Lt

Company

Troop or Squadron

Battery

PRINCE OF WALES CANADIAN AIRMT. INF Regiment

(See King's Regulations)

Army Form B 252

CHARGE

A

Statement of EVIDENCE in the case of:-
No 13,59037. PTE. KUPAUK. W.W.
'C' COY. P. P. C. A. I.

Sir,

At SERRACAPUAN on the 26th FEB 1944
at about 2000 hours, I was on Mobile
Patrol when I had occasion to check
the P/N Soldier. I questioned him as
regards the location of his unit and
he could give no satisfactory explanation.
I arrested him and conveyed him
to the Military Police H/Q to be
detained. He afterwards admitted that
he had been absent for 6 days.

SERRACAPUAN.
26.2.1944

7686227 *AV/Buff* SGT
C. M. POLICE.

I have read over and corroborate the above
statement.

SERRACAPUAN
26.2.1944

7690555 *Houseman* CAPT
REMARKS
C. M. POLICE.

Summary of Evidence in the Case of
B59037 Pte KUPLUK, W.W., "C" Coy., P.P.U.L.I.

The Commanding Officer directs that the evidence
be taken on oath.

1st WITNESS
for the
PROSECUTION

H16562 C.S.M. CASSELLS, H.C., "C" Coy., P.P.C.L.I., having
been duly sworn states:-

" I am H16562 C.S.M. CASSELLS, H.C., of "C" Coy, P.P.C.L.I.
" My evidence on the accused first charge is as
follows.

"On the 14th Feb 1944 the accused, Pte KUPLUK, was
going on a 48 hour pass. I told him he would be on pass
for 48 hours and then he would report to the "left out
of Battle" personnel on his return, for four days. He
would then return to his Coy at 1800 hrs 20 Feb 44 with
the ration lorry."

" My evidence on the accused's second charge is as
follows".

" The accused was returned to me on the night 1 Mar 44
On the following morning 2 Mar 44 I told the accused he
would be on Coy Commander's Orders at 1100 hrs. Upon
falling in the Orders Parade, Pte KUPLUK was absent.
I did not see him until 1300 hrs 2 Mar 44. I placed him
under close arrest".

The accused declines to cross-examine this witness (RP(4)(d))

(Signed) H.C. Cassells (C.S.M.)

2nd WITNESS
for the
PROSECUTION

H17013 Sgt SPIERS, C.D., "C" Coy., P.P.C.L.I., having been
duly sworn states:-

" I am H17013 Sgt SPIERS, C.D., "C" Coy., P.P.C.L.I."
"On the accused's first charge my evidence is as follows"
"The accused is a member of my platoon. On the day
of 20 Feb 44 the C.S.M. informed me that the accused
would return to his platoon from the "left out of Battle"
personnel at 1800 hrs on that date. He did not return.
I reported his absence to the C.S.M."

The accused declines to cross-examine this witness (RP(4)(d))

(Signed) C.D. Spiers (Sgt)

3rd WITNESS
For the
PROSECUTION

7685227 Sgt BURGE.A., C.M., Police.

I certify that in my opinion the attendance of No.7685227 Sgt BURGE.A., C.M.Police., is owing to the exigencies of the service not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused, and is attached hereto as exhibit "A".

(Signed)L.G.Beamish(Capt).
Officer detailed to take Summary.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so; but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give evidence on oath or make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused, and that Rules of Procedure 4 (C), (D),(E) and (F) have been complied with.

(Signed)L.G.Beamish(Capt)
P.P.C.L.I.

In the Field
11 Mar 44.

LIST OF EXHIBITS

"A". A.F.B.252 - Documentary evidence of
No.7685227 Sgt BURGE.A., C.M.Police.

C.B. Ware
(C.B.Ware) Lieut-Col.,
Commanding, P.P.C.L.I.

In the Field
12 Mar 44

LIST OF WITNESSES FOR
PROSECUTION

H16562 C.S.M. CASSELLS.H.C.
P.P.C.L.I.,
2 Cdn Inf Bde.

H17013 Sgt SPIERS.C.D.
P.P.C.L.I.,
2 Cdn Inf Bde.

No.7685227 Sgt BURGE.A.
C.M.Police.
SERRACAPRIOLA,

DEFENCE

N I L

E.B. Ware
(C.B.Ware) Lieut-Col.,
Commanding, P.P.C.L.I.

In the Field
12 Mar 44

Statement of balance in the care of
\$39097 per report & c. v. v. by P. P. P.

The Government of the State of New York
v. P. P. P.

Under the
of the

N. 16562 C. S. M. ¹⁸⁵⁴ C. S. M. ¹⁸⁵⁴ C. S. M. ¹⁸⁵⁴

The balance in the account of the State of New York
is as follows: \$39097 per report & c. v. v. by P. P. P.

The balance in the account of the State of New York
is as follows: \$39097 per report & c. v. v. by P. P. P.

The balance in the account of the State of New York
is as follows: \$39097 per report & c. v. v. by P. P. P.

The balance in the account of the State of New York
is as follows: \$39097 per report & c. v. v. by P. P. P.

H. B. Randall & S. M.

Sheet ②

to read
written
to the President.

H 17013 Sgt. Spiro C.D. C of G P.P.C.K. being
only seven states: of an H 17013 Sgt. Spiro C.D. C of G P.P.C.K.

On the accused's first change my witness is as follows.
The accused is a member of my platoon. On the day of 1st Feb 44
the C.S.M. commanded us that the accused should return to
his platoon from the left bank of the "Parment" at 1800 hrs
on that date. He did not return. I reported his absence to the
C.S.M.

The accused declines to show evidence this witness (R.P. 4(c))

L.D. Spiers Sgt.

7695227 Sgt. Bruce A. C.M. Poles

kindly
written
to the
President:

I certify that in my opinion the attendance of 7695227 Sgt.
Bruce A. C.M. Poles and of 7695222 Sgt. [Name] to
appear at the inquest of the service not readily
obtainable and a written statement of the witness, signed
by them has been read to the accused and is attached hereto as
"Exhibit A."

R. G. [Name] Capt
(Officer detailed to take testimony)

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence
in court? You are not obliged to say anything or give
evidence unless you wish to do so, but whatever you say or give
evidence you give will be taken down in writing and may be given
in evidence (R.P. 4(c))

Sheet ③

The accused declines to give evidence or call or make
a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consists
of three pages also taken down by me in the presence of
the accused and that Rules of Procedure 4 (c) (d) (e)
and (f) have been complied with.

L. G. Beaumont Esq.

R.P.C. 16

In the field

11 Nov. 44.

No. B59037 Name KUFLUK, W.W. Sqn., Battery, or Company "C" Corps C.I.C. Date of enlistment 5-9-41 G.C. Badges Service or Proficiency Pay M.F.M. 6 A.F.B. 122 (1934 7-41 (121)-203 11-52 1772-22-1022)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order discharging with trial	By whom awarded	Remarks
Field	14-1-44	Pte		WOAS AA Sec 15 (1) AWL in that he in the Field on the 14th Jan 44 did absent himself without leave from 0830 hrs 14 Jan 44 until 1200 hrs 14 Jan 44. (3 hrs 30 min)	Sgt Spiers	7 dys C.B.		E. P. T. Green	Capt.
Field	XXXXXXXXXXXX 30-1-44	Pte.		WOAS Sec 15 (1) AWL from 1800 hrs 30 Jan 44 until 0700 hrs 31 Jan 44 (Absent 19 hrs)	L/Sgt Wilmore	7 dys C.B. For 1 days pay by F.R.I. 149 (1)(a)			
(Certified to be a true copy from the Regimental Books in my custody) (C.B. Ware) Lieut-Col., Commanding, P.F.C.L.I.									

No. B59037 Name KUFLUK, W.W. Sqn., Battery, or Company "C" Corps C.I.C. Date of enlistment 5-9-41 G.C. Badges Service or Proficiency Pay M.F.M. 6 A.F.B. 122 (1934 7-41 (121)-203 11-52 1772-22-1022)

Date of last entry in Company Conduct Sheet 5-3-42 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character

N.A. Sheet No. 1 Sheet destroyed 4-7-42 H. Cannell Capt.

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order discharging with trial	By whom awarded	Remarks
Camp Niagara	23/3/42	Pte		AWL 1300 hrs 23-3-42 until 2355 hrs 23-3-42 (10 hrs 55 mins)	XXXXXXXXXX Pte. Rajotte	4 days C.B.	24-3-42	F.B. Clifford	
Camp Niagara	11/4/42	Pte		AWL 2200 hrs 11-4-42 until 0700 hrs 12-4-42 (9 hrs) Open arrest	Cpl Correy	3 days C.B.	13-4-42	N. Thompson	For 1 dy pay (149)
Manaimo	24-4-42	Pte		(i) AWL 2200 hrs 20-4-42 until 0700 hrs 21-4-42 (ii) AWL 0800 hrs 24-4-42 until 2145 hrs 24-4-42	Cpl Correy LCpl Valiquette	18 dys detention	25-4-42	W. Gusinger Lt-Col	
Manaimo	19/5/42	Pte		AWL 1330 hrs 18-5-42 until 1505 hrs 18-5-42. SCGS 19-5-42	Cpl Baun Capt. Roy	7 dys pay	19-5-42	C.O.	G & R
Camp Borden	28-5-42	Pte		AA Sec 15 (1) AWL on failing to return from embarkation leave after having been duly warned for draft from 0600 hrs 28-5-42 until apprehended at Sudbury at 0215 hrs 29-5-42 (20 hrs 15 min)	Cpl Hare Cpl McFarland	7 dys C.B.	1-6-42	H.M. Williams	For Major 1 dys pay

No. B59037 Name KUPLUK, W.W. Sqn., Battery, or Company "C" Corps C.I.C. Date of enlistment 5-9-41 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 12) (1254-7-41) (125-20) (11-2) 1772-20-1052

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order (same as with trial)	By whom awarded	Remarks
Field	14-1-44	Pte		WOAS AA Sec 15 (1) AWL in that he in the Field on the 14th Jan 44 did absent himself without leave from 0830 hrs 14 Jan 44 until 1200 hrs 14 Jan 44. (3 hrs 30 min)	Sgt Spiers	7 dys C.B.		E. P. T. Green	Capt.
Field	14-1-44 30-1-44	Pte. Pte.		WOAS Sec 15 (1) AWL from 1200 hrs 30 Jan 44 until 0700 hrs 31 Jan 44 (Absent 19 hrs)	L/Sgt Wilmore	7 dys C.B. For 1 days pay by F.R.I. 149 (1)(a)			

(Certified to be a true copy from the Regimental Books in my custody)
E.P. Green
 (C.B. Ware) Lieut.-Col.,
 Commanding, P.F.C.L.I.

No. B59037 Name KUPLUK, W.W. Sqn., Battery, or Company "C" Corps C.I.C. Date of enlistment 5-9-41 G.C. Badges Service or Proficiency Pay W.G.F. 1-1-45 M.F.M. 6 (A.F.B. 12) (1254-7-41) (125-20) (11-2) 1772-20-1052

Date of last entry in Company Conduct Sheet 5-3-42 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 N.A. Signature O.C. H. Cannell Capt. etc. Character

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order (same as with trial)	By whom awarded	Remarks
Camp	23/3/42	Pte		AWL 1300 hrs 23-3-42 until 2355 hrs 23-3-42 (10 hrs 55 mins)	xxxxxx Pte. Rajotte	4 days C.B.	24-3-42	F.B. Clifford	
Camp	11/4/42	Pte		AWL 2200 hrs 11-4-42 until 0700 hrs 12-4-42 (9 hrs) Open arrest	Cpl Correy Pte. Roy	3 days C.B.	13-4-42	N. Thompson	For 1 dy pay (149)
Nanaimo	24-4-42	Pte		(1) AWL 2200 hrs 20-4-42 until 0700 hrs 21-4-42 (11) AWL 0800 hrs 24-4-42 until 2145 hrs 24-4-42	Cpl Correy LCpl Valiquette	18 dys detention	25-4-42	W. Gusinger Lt-Col	
Nanaimo	19/5/42	Pte		AWL 1330 hrs 18-5-42 until 1505 hrs 18-5-42. SOS 19-5-42	Cpl Beun Capt. Roy	7 dys pay	19-5-42	C.O.	G & R
Camp Borden	28-5-42	Pte		AA Sec 15 (1) AWL on failing to return from embarkation leave after having been duly warned for draft from 0600 hrs 28-5-42 until apprehended at Sudbury at 0215 hrs 29-5-42 (20 hrs 15 min)	Cpl Hare Cpl McFarland	7 dys C.B.	1-6-42	H.M. Williams Major	For 1 dys pay

Place	Date of offense	Rank	Case of drunkenness	OFFENSE	Name of Witness	Punishment awarded	Date of award or of order depending with trial	By whom awarded	Remarks
Field	17-10-43	Pts		POSS. Conduct etc - due to prev. indulgence in alcoholic stimulents was unfit for duty causing another soldier to take his tour of duty and 2350 hrs 7-4-43 until 1830 hrs 9-4-43 (1 dy 18 hrs 31 min).	Sgt Hillings Douglas	7 dys S.B.	18-10-43	A.S. Martin Capt	
Field	7-4-43	Pts		(1) AA Sec 11 Neglecting to obey Depot orders, being in Phillips ville without a pass	Cpl Blake	8 dys F.F.	10-4-43	Major Rockingham	Tot for 10 dys pay
Field	15-8-43	Pts.		(2) AA Sec 11 Neglecting to obey Depot orders, out of bounds, being in Brothel area. (3) AA Sec 9 (2) Disobeying a lawful command given by his superior officer. (4) AA Sec 10 (5) Neglecting an escort.	Documentary	14 dys F.F. 14 dys pay	18-8-43	Lt-Col A.S. Hallett	

4X-43.

Pte. Kurt. A.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 86987 PTE ARNOLD EMILE KURT

Charge.	Plea.	Finding.	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
(Insert "alternative" where applicable.) 1st <u>15(1)</u>	(See Instrs p 2.) <u>guilty</u>	(See note below.) <u>guilty</u>	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and an loss of kit see RP 44 fn 6.)

At present under sentence for 30 days (including this date) (1)

Time in confinement awaiting present trial—a total of 12 days, of which nil days were spent in hospital. (2)

Sentence Awarded by the Court:

60 days forfeiture of pay

(Sgd) 15 Jan 45 Date awarded. (Sgd) [Signature] President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(S), RP 120(F), MML p 760.)

Date (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders. (1)

(Sgd) [Signature] Commanding
(J M Rockingham) Brig
Date 18 Jan 45 Commanding 9 Can Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.
A 86987 PTE 19 JAN 45 [Signature]
ARNOLD EMILE KURT
NORTH NOVA SCOTIA HIGHLANDERS
ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

RECORDED AT CMHQ IN AB 160
Convened by Order of Brig J M Rockingham ProComd 9 CIB dated 15 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) apmnt, A/rank or A/apmnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)
Number. (a) Prmnt R. (b) Apmnt, A/R or A/Appnt. Full Christian Names. Surname. Unit.

A 86987 ARNOLD EMILE KURT NNS Highls

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Hoelans on (date(s)) 15 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALIZED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto. (1) The Court is satisfied that it is properly convened and constituted, (2) accused is (are) amenable to military law, and each charge discloses an offence. (3)

(1. As to use of Summary of Evidence see RP 17 fns. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 14.10 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. (1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO. (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to _____ as interpreter? Ans _____

The Interpreter is sworn. (1) Do you object to _____ as shorthand writer? Ans _____

(1. RP 72. Delete, if name employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused. (1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Yes. (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn. (1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	<u>Major</u>	<u>KLUGMAN</u>	<u>EF</u>	<u>H.L.I. of C</u>
Member	<u>Capt</u>	<u>FOX</u>	<u>B.G.</u>	<u>576 Highls</u>
Member	<u>Capt</u>	<u>SMITH</u>	<u>L.L.</u>	<u>HQ 9 CIB</u>
Judge-Advocate		<u>COOK</u>	<u>GE.</u>	
Prosecutor	<u>LT.</u>	<u>BETLEY</u>	<u>TRR</u>	<u>NNS Highls</u>
Defending Offr	<u>LT</u>	<u>BETLEY</u>	<u>TRR</u>	<u>NNS Highls</u>

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Yes. (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See D1 p 3.)

A8. The accused _____ before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet. (1) The accused does (not) not object to any charge. (2) There is no amendment to be made to the Charge Sheet. (2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62: when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Presiding was absent so his place was taken by the waiting member.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Officer. If Convening Officer concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc. see RP 75-79, 85, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)⁽¹⁾, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.⁽²⁾
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)⁽¹⁾. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty⁽²⁾, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined⁽³⁾, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.⁽⁴⁾

President to accused: Do you wish to make a statement? Ans. Yes
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement⁽¹⁾. The Court decides not to advise accused to change his (their) plea(s) of Guilty to Not Guilty on any charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on no charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.⁽¹⁾
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.⁽²⁾
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.⁽¹⁾
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.⁽¹⁾
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.⁽¹⁾

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.⁽¹⁾

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.⁽¹⁾ The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s)⁽²⁾. The Court is closed, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that the accused is (are) found Not Guilty on the latter charge(s).⁽⁴⁾

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence⁽¹⁾. You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.⁽²⁾ You may, however, make a statement without being sworn, and you will not be subject to cross-examination.⁽³⁾ But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.⁽⁴⁾ You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. Yes I intend to call witnesses on your behalf?
Ans. Are they witnesses as to character only? Ans.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.⁽¹⁾
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CP 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).⁽¹⁾ The finding(s) of the Court is (are) recorded in Part I of the Schedule.⁽²⁾ The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.⁽¹⁾ Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.⁽²⁾
(1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?⁽¹⁾

Ans. Yes
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service⁽¹⁾, and certified true copy (copies) of Conduct Sheet(s)⁽²⁾, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.⁽³⁾
(1. MFB 355 or MFB 296. 2. MFM s. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?⁽¹⁾ Ans. Yes
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.⁽¹⁾
(1. AA 54(s), RP 120(A).)

E5. The Court considers the sentence.⁽²⁾ The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.⁽³⁾

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 320, 563-566, Overseas RID 309, 232, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

E. A. May

The accused, A.86957 Pte. Arnold Emile SUUNT, North Nova Scotia Highlanders, a soldier of the Canadian Army Overseas, is charged with,

First Charge
Army Act
sec 15 (1)

When on Active Service, absenting himself without leave,
in that he,

in the field absented himself without leave from 0900 hours 9 Dec 44 until apprehended at 2345 hours 3 Jan 45.
(Absent 25 days, 14 hrs, 45 mins)

In the Field
13 Jan 45

J. C. Sprakes
(P.A. Sprakes) A/Lt.-Col.
Commanding
North Nova Scotia Highlanders

To be tried by Field General Court-Martial.

In the Field
15 Jan 45

John Rockingham
(J. M. Rockingham) Brig

Ex m

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apgmt, A/R or A/Apgmt, if any, see AA 182, 183, fn, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt B.	(b) Apgmt, A/R or A/Apgmt.	Full Christian Names.	Surname.	Unit.
A-86987	Pte		Arnold Emil	KURT	Nth NS Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) of ~~which~~ in the Charge Sheet(s) attached and on (date) 15 Jan 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate ~~thereat~~ the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	<u>E F Klugman</u>	HLI of C
(Rank)	(Must be named. RP 106.)	(Unit)

MEMBERS.

Capt	<u>E G Fox</u>	SD & G Highrs
Lt	<u>J S Fleming</u>	Nth NS Highrs
(Rank)	(Named or detailed. RP 106.)	(Unit)

WAITING MEMBER.

Capt	<u>L L Smith</u>	HQ 9 Cdn Inf Bde
(Rank)	(Named or detailed, if any. RP 106.)	(Unit)

JUDGE-ADVOCATE.

(Rank)	(Must be named, if any. RP 106.)	(Unit)
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On Active Service in the Fd

in	<u>Holland</u>	<u>John Rockingham</u>	Brig
	(Country)	(Signed personally. RP 105 fn 2.)	(Rank)
		(J M Rockingham)	

Date	<u>15 Jan 45</u>	Commanding	<u>9 Cdn Inf Bde</u>	Convening Officer.
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CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

MEDICAL CERTIFICATE

I certify that I have this morning examined
A.86987 PTE. KURT, A.E. (North Nova Scotia High'rs), and
in my opinion he is fit to undergo Trial by Court-Martial.

STATION:- In the Field

DATE:- 15 Jan 49.

K. A. Campbell
(K. A. Campbell Capt)
Medical Officer,
North Nova Scotia Highlanders.

Ed May

CANADIAN LEGION
WAR SERVICES INC.

CANADIAN
KNIGHTS OF COLUMBUS
WAR SERVICES

ON ACTIVE SERVICE

Lydney
CANADIAN Y.M.C.A.
OVERSEAS

THE SALVATION ARMY
CANADIAN
WAR SERVICES

Place of Notification on behalf of #86487 Pte. Hunt R.C.

Pte Hunt as shown by the 4th character witnesses
is a good soldier. He landed on D-Day 1944 and
was with the 4th Armored. On 23rd June 44 he came to
the camp at St. Omer. While in hospital on 15 Sept. 44
he suffered from a severe case of influenza which
started circulating about morning in "St. Omer" and
saying he deliberately allowed his head to be
infected. Returned to his platoon on 16 Oct. 44.
He was back to hospital with influenza again probably contracted
on 23 Oct. 44. This infection was slight and his
general condition was improved and he was able to
return to his platoon on 23 Oct. 44. He being promoted
in the platoon. Pte Hunt and #86487 on 19 Dec. 44.

Robert Lydney

1st Witness as to Character

25 May

F. 55225 L/Sgt Sherr, E., "C" Company, North
Nova Scotia Highlanders, having been duly sworn
states: Pte Kurt has been a member of
my section since November, 1944. During
that time I have found him to
be a very obedient and faithful
soldier. He has always carried out
orders in a very obedient manner and
I have no fault to find with him
as a soldier.

Ex A' ~~69~~ May

Summary of Evidence in the case of A 86987
Pfc Arnold Emale Kunt, 'C' Coy, North Nova
Scotia Highlanders B.W.F.F., a soldier of the
Canadian Army Overseas.

The Commanding Officer directs that the
Evidence be taken on oath.

First Witness: F 59965 Sgt Cannon, AT, sworn,
In the Prosecution: states + I am F 59965 Sgt Cannon
AT, 'C' Coy, North Nova Scotia Highlanders. On the morning of 8 Dec 44 I
informed Lt Sgt Green, #6 Blue Comd., to
submit a man's name for a period of
twenty-four hours rest at the Regimental
Rest Centre, situated three quarters of a mile
in rear of 'C' Coy position. Lt Sgt Green
submitted the name of Pfc Kunt. Lt Sgt Green
reported to me on the 8th December that Pfc
Kunt had been despatched to the rest centre
at approximately 0900 hrs 8 Dec 44. On the
following morning, 9 Dec 44, Lt Sgt Green
reported to me that Pfc Kunt had not returned
from the twenty-four hour rest. Kunt should
have reported back to the Pl. the morning
of the 9 Dec 44. I reported his absence to Coy
Officer. I did not again see Pfc Kunt until
the evening of 12 Jan 45, in the Regimental
Guard Room. He has never appeared on any
my Pfc parade since 8 Dec 44.

Q. Were any other men from your Platoon
on the same 24 hr rest period.

A. Yes Sir. They reported back on time.
I thereby present as evidence, certificate

under the Army Act, Section 163(1)(j), dated
3 Jan 45 and signed by the officer in charge
Sheet 1st, 2 Cdn Coy C Para Coy 21 Army Gp,
relating to the accused, A 86989 Pte Kurt AC.

M J Heffernan, v

Q The accused declines to cross examine this
witness.

Question to the accused.

Do you wish to make any statement or
to give evidence upon oath? you are not
obliged to say anything or to give evidence
unless you wish to do so but whatever
you say or any evidence you give
will be taken down in writing and
may be used against you.

A No Sir.

Q Do you wish to call any witnesses
in your defence at this time.

A No Sir.

A B Kurt

Rules of procedure 4(c)(d)(e)(f) + (g)
have been complied with.

I certify that the foregoing summary of
evidence, consisting of two pages, was
taken down by me in writing in the
presence of the accused, this 13 day of
January, 1945.

In the Field
13 Jan 45

M J Heffernan Capt
off. / 16 Summary

SUMMARY OF EVIDENCE in the case of A.86987 Pte. Arnolda Haile KURT, "G" Coy. North Nova Scotia Highlanders, BWEP, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath. *Edna*

FIRST WITNESS
for the
Prosecution

Ex A'
Leahman
my

F. Wayne Sgt. Cannon, A.T., sworn states: " I am F.59985 Sgt. Cannon, "G" Coy. North Nova Scotia Highlanders. On the morning of 8 Dec 44, as platoon commander of 14 platoon, I warned L/Sgt Green No. 5 Sec commander, to submit a man's name for a period of twenty-four hours rest at the Regimental Rest Centre, situated three quarters of a mile in the rear of "G" Coy. position. L/Sgt Green submitted the name of Pte. Kurt. L/Sgt Green reported to me on the 8 December that Pte. Kurt had been despatched to the rest centre at approximately 0900 hours 8 Dec 44. On the following morning, 9 Dec 44, L/Sgt Green reported to me that Pte. Kurt had not returned from the twenty-four hour rest. Kurt should have reported back to the platoon the morning of the 9 Dec 44. I reported his absence to Coy. office. I did not again see Pte. Kurt until the evening of the 12 Jan 45, in the Regimental Guard Room. He has never appeared on any platoon parade since 8 Dec 44.

Q. Were any other men from your platoon on the same 24 hour rest period?

A. Yes, sir, two. They reported back on time.

I hereby present, as evidence, certificate under the Army Act section 163 (i) (j) dated 3 Jan 45 and signed by the officer in charge Ghent Det. 2 Cdn L of C Provost Coy. 21 Army Gp relating to the accused A.86987 Pte. Kurt, A.C."

Signed
(A.G. Cannon) Sgt
North Nova Scotia Highrs.

The accused declines to cross-examine this witness.

Question to the accused

Q. Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be used against you.

A. No, sir.

Q. Do you wish to call any witnesses in your defence at this point?

A. No, sir.

Rules of Procedure 4 (c) (d) (e) (f) & (g) have been complied with.

I certify that the foregoing summary of evidence, consisting

.....2

W. J. ... *Lx "A" ...*

CERTIFIC. I. ND. ARMY ACT, SECTION 53 (1) (j)

Certified that No. ~~A-86987~~ Rank ~~Pte~~ Name ~~Furt A. P.~~
of the ~~North. New. Sectia. Highrs.~~ Regt. ~~XXXXXXXXXXXX~~ No. ~~J-2319~~
Rank ~~L/cpl.~~ Name ~~Olson J. B.~~ was apprehended by
of the ~~2 Cdn L of C Prov Coy.~~
Ghent Detach. at Ghent Belgium at ~~2245~~ hrs, on the ~~3~~
day of ~~Jan 45~~ as an absentee without leave.

He was wearing Military Uniform at the time of his ~~XXXXXXXXXX~~
~~XXXXXXXXXX~~ arrest.

Place ~~Ghent Belgium~~
Date ~~3 Jan 45~~



W. Malaffy Lieut. 1/c
~~XXXXXXXXXXXX~~ Ghent Detach
2 Cdn L of C Prov Coy 21 Army Grp.

116th

E x 'B'
E. J. Langman
 Form B 296

Statement as to Character and Particulars of Service of Accused.

Number. Rank. Name. Regiment (or as the case may be).
 A. 86987 Pte. Kurt, A. B. 4th Inf Highlanders

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, R.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, produced in court, in the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTIONS.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	times	times.
FOR 204	ADDED 420	ADDED 240
FOR 204	ADDED 420	ADDED 240
FOR 204	ADDED 420	ADDED 240
FOR 204	ADDED 420	ADDED 240

Number of instances of gallantry or distinguished conduct
 of
 NIL
 There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or
 Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispositions under other sections of the Army Act, are as follows:—

3. The accused is not under sentence at the present time, or the accused at the present time is under sentence of—

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in military custody, making a total of 12 days in civil custody, nil days in military custody, making a total of 12 days in military custody, nil days in hospital.

5. The present age of the accused according to his record of service is 30 years.

6. The date of his attestation specified in his record of service is 20 Aug 42 (Active) and 26 Jun 42 (Reserve).

7. The accused is entitled to receive nil days of leave for the purpose of determining his position, etc.

8. The accused is in possession of nil military decorations or awards for the purpose of determining his position, etc. (state any military decoration or reward). C.V.C.M.

9. If the accused is a warrant officer, the accused before he was made a warrant officer had the right of nil.

10. If the case is of an officer, the accused holds in the Army the rank of nil and in his regiment (or corps or department) the rank of nil.

SUMMARY OF EVIDENCE in the case of A.86987 Pte. Arnold Emile KURT, "C" Coy, North Nova Scotia Highlanders, BMEP, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath. *Y.S. Cannon*

Ex A
Y.S. Cannon
my

FIRST WITNESS P. Desmond Sgt. Cannon, A.T., sworn states: " I am P.59965 Sgt. Cannon, "C" Coy, North Nova Scotia Highlanders. On the morning of 8 Dec 44, as platoon commander of 14 platoon, I warned L/Sgt Green No. 5 Sec commander, to submit a man's name for a period of twenty-four hours rest at the Regimental Rest Centre, situated three quarters of a mile in the rear of "G" Coy. position. L/Sgt Green submitted the name of Pte. Kurt. L/Sgt Green reported to me on the 8 December that Pte. Kurt had been despatched to the rest centre at approximately 0900 hours 8 Dec 44. On the following morning, 9 Dec 44, L/Sgt Green reported to me that Pte. Kurt had not returned from the twenty-four hour rest. Kurt should have reported back to the platoon the morning of the 9 Dec 44. I reported his absence to Coy. office. I did not again see Pte. Kurt until the evening of the 12 Jan 45, in the Regimental Guard Room. He has never appeared on any platoon-parade since 8 Dec 44.

- Q. Were any other men from your platoon on the same 24 hour rest period?
A. Yes, sir, two. They reported back on time.

I hereby present, as evidence, certificate under the Army Act section 163 (i) (j) dated 3 Jan 45 and signed by the officer in charge Ghent Det. 2 Cdn L of C Provost Coy. 21 Army Gp relating to the accused A.86987 Pte. Kurt, A.C."

Signed
(A.S. Cannon) Sgt
North Nova Scotia Highrs.

The accused declines to cross-examine this witness.

Question to the accused

- Q. Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be used against you.
A. No, sir.
Q. Do you wish to call any witnesses in your defence at this point?
A. No, sir.

Rules of Procedure 4 (c) (d) (e) (f) & (g) have been complied with.

I certify that the foregoing summary of evidence, consisting

consisting
of two pages, was taken down by me in writing in the presence of the
accused, this 13 day of Jan 1945

In the Field
13 Jan 45

(M.J. Heffernan) Capt & Adjt MHCN
Officer i/c Summary

No. A. 869

Name KURT, A.E.

Sq., Battery,
or Company

Corps CIC

Date of
enlistment

26 Jan 44

G.C.
Badges

Service or
Proficiency Pay

M.F.M. 6

(A.F.H. 122)
40/P & B/136 (2037)

Sheet No.

Signature O.C.
Company, etc.

Character

Date of last entry in
Company Conduct Sheet

No. and date
of last drunk

Period not reckoning towards
freedom from extra fine

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary Sheet		EX 'C'			
				Original sent to A Ech as man was SCS					
				M. J. Hefferman Capt & Adj (M. J. Hefferman) Capt & Adj Officer i/c Stock Records, 17th NS Highlanders					

HV.38

PTB KURULUIK A.

FIELD GENERAL CO

Convicted by Order of BRIG. G. R. D. FARMER ACCUSED.

2 FEB 1945 (As to the trial of two or more charged jointly see RP 16, 71, 109, A, B, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fn, KR Can (a) Prmt R. (b) Appmt, A/R or A/Appmt. Full Number)

711744

PTF
Reviewed
R. H. ...
24 Feb 45
Capt.
OFFICER, JAG ...

ALEC

4388
9 MAR 45
NO COPY
G. W. ...

PROCEEDINGS OF TRIAL.

23 Jan 45

Holland

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

- A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.
- (PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED. IF NOT USED OR APPLICABLE AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fm ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 744 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A96, for acts and instrs on how to record addresses, evidence, etc, which instrs are heretofore called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)
- A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto. (1) The Court is satisfied that it is properly convened and constituted. (2) accused is (are) amenable to military law, and each charge discloses an offence. (3)
- (1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 1-13, 23, 24.)
- A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences.
- A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. (1) The Prosecutor informs the Court that accused shall be tried by court-martial instead of being dealt with summarily by the C.A. (2) 2. AA 46(B), RP 40 fn 1. For effect see KR Can 563(c). Delete, if not applicable.
- (1. KR Can 557. 2. AA 46(B), RP 40 fn 1. For effect see KR Can 563(c). Delete, if not applicable.
- A5. President to accused: Do you object to ... as interpreter? Ans ... as shorthand writer? Ans ...
- The interpreter is sworn. (1) Do you object to ... as shorthand writer in sworn? (2)
- (1. RP 72. Delete, if name employed.)
- A6. The Convening Order and names of the President and Members of the Court are read to the accused. (1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
- Ans NO (2) 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)
- A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn. (1) The following are the ranks, names and units of the offrs comprising the Court, etc:
- President LT. COL. J.W.G. THOMPSON M.H.F.D. RCA.
- Member MAJOR M.L. TROY FD. A.R.R.
- Member CAPT K.F. GAREN 18 CDN ARMOC REGT.
- Judge-Advocate CAPT F.H. GEORGE RCAMC. 5 CDN F.D.S.
- Prosecutor CAPT C.A. GADES. RCAMC. 5 CDN F.D.S.
- Defending Offr NO Is the Defending Offr a lawyer? Ans NO (2)
- Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)
- (1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
- (2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)
- A8. The accused
- (1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57) or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, evidence, if any, and finding are reported per Notes. For forms of record see references in fn to RP cited. Insert in AB rank and name of the accused making the plea.)
- A9. The accused is (are) arraigned (separately) on all charges in the charge sheet. (1) The accused does (not) object to any charge. (2) There is no amendment to be made to the Charge Sheet. (3) The President records the pleas in Part I of the Schedule.
- (1. RP 21, 112. See para 1 of instr p 2. When more than one Charge Sheet see RP 62: when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)
- A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 copies
sent
P. 1/54

RECORDED AT CMHQ IN AB 100 4V38

FIELD GENERAL COURT-MARTIAL

CF 496 (10) (Rev. 10-67) OF AFPM 1
4/38B

Convened by Order of BRIG. G. R. D. FARMER, Comd RCAMC 2 Cbn Corps dated 19 JAN 45

2 FEB 1945
Number

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appt, A/rank or A/appt, if any, see AA 182, 183, Ins, KR Can 306, 328, 330.)

(a) Prmt R. (b) Appt, A/R or A/Appt. Full Christian Names. Surname

M11744 PTE ALECK KURULVILK SCAN F.D.S.
PROCEEDINGS OF TRIAL.
 24 Feb 45
 APT. 11 CAN F.D.S.
 RCAMC

Held in the P.I. in (country) HOLLAND on (date(s)) 23 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 20/119

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant form RAs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 496, for instructions on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President informs the Court the Convening Order and Charge Sheet(s) attached thereto.⁽¹⁾ The Court is satisfied that it is properly convened and constituted⁽²⁾, accused is (are) amenable to military law, and each charge discloses an offense.⁽³⁾

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 21, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.⁽⁴⁾ The Prosecutor informs the Court that accused is (are) to be tried by court-martial instead of being dealt with summarily by the CO.⁽⁵⁾

(1. KR Can 557. 2. AA 46(B), RP 20 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to swear: Do you object to _____ as interpreter? Ans _____

The interpreter is sworn.⁽¹⁾ Do you object to _____ as shorthand writer? Ans _____

The shorthand writer is sworn.⁽²⁾
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.⁽³⁾ President to convene: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO ⁽²⁾
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.⁽⁴⁾ The following are the ranks, names and units of the offrs comprising the Court, etc:

President	<u>LT. COL.</u>	<u>J. W. G. THOMPSON M.A.F.D.</u>	<u>R.C.A.</u>
Member	<u>MAJOR</u>	<u>M. L. TROY F.D.</u>	<u>A.L.R.</u>
Member	<u>CAPT</u>	<u>K. F. GAREN</u>	<u>18 Cdn Arm Co Regt.</u>
Judge-Advocate			
Prosecutor	<u>CAPT.</u>	<u>F. H. GEORGE RCAMC</u>	<u>5 Cdn F.D.S.</u>
Defending Offr	<u>CAPT.</u>	<u>C. A. LADES RCAMC</u>	<u>5 Cdn F.D.S.</u>

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO ⁽²⁾
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See Di p 3.)

A8. The accused _____ before arraignment make(s) (no) plea ⁽³⁾
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RSP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.⁽⁴⁾ The accused does (not) object to any charge.⁽⁵⁾ There is no amendment to be made to the Charge Sheet.⁽⁶⁾ The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(c), and use separate copies of CF 496 to record proceedings. 2. RP 32, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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Bound
P. 174

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc., offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or recalling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)⁽¹⁾, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.⁽²⁾

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).⁽¹⁾ If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty⁽²⁾, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined⁽³⁾, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.⁽⁴⁾

President to accused: Do you wish to make a statement? Ans.⁽²⁾

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E.

5. Statement, if any, recorded per Notes.

B3. The Court considers the accused's statement.⁽¹⁾ The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

If Court may be closed to consider the statement. Delete whole or part not used.

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.⁽¹⁾

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.⁽¹⁾

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D6 inclusive of Record Form D on p 3, RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.⁽¹⁾

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.⁽¹⁾

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D6 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No M11744 Pte Aleck Kuruluk, 5 Cdn FDS
RCAMC attached 11 Cdn FDS, a soldier of the Canadian
Army Overseas, is charged with:

Section 40
Army Act

WHEN ON ACTIVE SERVICE
NEGLECT TO THE PREJUDICE OF GOOD ORDER AND
MILITARY DISCIPLINE

in that he
While with his Unit, (5 Cdn FDS RCAMC) at 0645 hrs
9 January 1945 so negligently handled a Belgian
Pistol, Serial No 789813 Browning's Patent, as to
cause it to be discharged and thereby injured his
right leg and rendered himself unfit for service.

J B Bundoek
(J B BUNDOCK) MAJOR RCAMC
Offr Comd - - 11 CDM FDS

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
19 Jan 45

G. H. D. Farmer
(G. H. D. Farmer) Brigadier
DDMS, 2 Cdn Corps

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFAS)
40/PAN/10/97 (22/98)

(Whether the accused to be tried is under his command or not, a FGCM may an application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate command of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/Rank or A/appmt, if any, see AA 182, 183, fn, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.11744	Pte		Aleck	KURULUIK	5 Cdn FDS RCAMC att 11 Cdn FDS RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (has) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 19 Jan 45 endorsed by me, (or by another offr of my staff for me): "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior tribunal~~ *See 2*
(Delete part in brackets where not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~As I am unable to appoint (a) three Offrs to form the Court, (b) a Pd Offr as President, for the reasons I have~~ *See 2*
attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~As I also appoint as Judge-Advocate the Offr mentioned hereunder~~ *See 2*
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt. Col	J. W. G. Thompson, MM, ED,	RCA
(Rank)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Major	M. L. Troy, ED	1st Regt
(Rank)	(Named or detailed. RP 106.)	(Unit.)
Captain	K. E. Garen	18 Cdn Armd B Regt (12D)
(Rank)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank)	(Named or detailed, if any. RP 106.)	(Unit.)
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JUDGE-ADVOCATE.

(Rank)	(Must be named, if any. RP 106.)	(Unit.)
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On Active Service in the Fd

in Holland
(Country.)

G. H. J. Farmer
(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Date 19 Jan 45

Commanding RCAMC 2 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

11 Cdn Fd Dressing Bn

Date *Jan. 23, 1945*

Luys

THIS TO CERTIFY THAT I HAVE, THIS DAY EXAMINED NO *M11744*
RANK *P4* NAME *Kumelik, A.*
AND FIND HIM *fit* TO UNDERGO TRIAL BY FD GENERAL CRT/MART.

J. med. Conston Capt
(MEDICAL OFFICER)

Time of signature. *1100 A.*

First Witness For Prosecution.

Capt. P. Bernstein, 5 Cdn F.D.S. sworn states:

I recognize the accused as a member of 5 Cdn F.D.S. I was duty M.O. at 5 Cdn F.D.S. on 9 Jan 45 at app 0650 hrs I was called to the A&D room where I saw the accused. He had a l.s.w. of his right thigh. I rendered first aid treatment and evacuated the accused to 11 Cdn F.D.S.

No Cross ExaminationThe Court

The accused had a small wound of entry on the inner aspect lower third of his right thigh. There was no point of exit. There were no powder burns. The accused was normal mentally. I questioned the accused as to the circumstances and he told me that while he was on guard duty he had a small Belgian pistol in his right great coat pocket and while walking with his hand in his right great coat pocket he heard a bang and realized he was shot in the right thigh. The accused assumed he was shot by the weapon in his pocket. In my opinion it was quite possible for the accused to suffer a wound of this description from a weapon carried in his great coat pocket. Normally the accused does not carry a weapon as he is medical personnel and not issued with a weapon. When the accused was on guard he was not expected to carry a weapon.

2.
I did not think there would be any permanent disability and there was no fracture. The accused had been with our unit for app one month and came as a ~~priv~~ ^{priv} ~~rein~~ ^{rein}. His work with the unit was quite satisfactory.

R.P. 83 (B) complied with.

Second Witness for Prosecution

A 35492 Bdr O'Shea T. P. 19 Cdn Spec Emp Coy.
att 5 Cdn F. D. S. Sworn states.

On the morning of 9 Jan 45 the accused whom I recognize and I was on guard duty at gate of 5 Cdn F. D. S. While patrolling the road in front of the building at app 0645 hrs the pistol the accused had in his pocket discharged. The accused cursed at being hit. I took him to the M.I.R. and turned him over to the man in charge. It was a ~~small~~ small Belgian automatic with about a .25 cal. I took the weapon from the accused and handed it on to Capt Bernstein. I neglected to take the number of the pistol.

* Weapon is produced to Comd.

I would say the weapon produced is in my opinion similar to the weapon I took from the accused.

Cross Examined

At the time of the discharge the accused and myself were walking side by side. Before the accident I did not know the accused was carrying a weapon.

When I mount the guard I never read any Unit Standing Orders and we have never had any standing orders read to us. At the time of the accused injury it was my opinion that someone had shot him. The accused appeared very surprised. The accused removed the weapon from his pocket. I saw it immediately. The spent cartridge was not fully ejected and was hanging in the breach. I am familiar with small arms up to a certain point. Both the accused and I examined the weapon but I was interested in getting the accused to the M. I. R. I have never seen that weapon before the date of the injury.

Re Examined

We were patrolling between two gates.

The Guard

I carry a sten. I am on strictly guard duty. Medical Personnel do not carry weapons. I did not know the accused was carrying a weapon. I did not read or know of any orders to turn in Foreign Weapons altho I heard a rumour that they were going to be called in. I did not read any order up to the date of the injury about turning in Foreign Weapons. The accused appeared to be worried about the consequences on receiving the wound. The accused had both hands in his pockets while we were walking along. I was on his left walking shoulder to shoulder. I was just first light. The accused had ^{his} hands in his pockets when the weapon dis charged. The weapon was produced from his right pocket. The accused had carried out his duties very well.

The accused did not say where he got the weapon. The accused made no remarks to me about the weapon. I removed the mag from the pistol and it was loaded. The safety catch was on when I examined the pistol. at the moment of the discharge and previous we were talking about making up the accused's companions.

R.P. 83. (B) complied with.

Blind Witness for Prosecution.

M41957 Pte Caswell E. G. 5 Can F. D. S. Sworn states.

I recognize and know the accused. On the night of 8 Jan 45 I gave the accused a Belgium pistol as he was going on guard. I owned the pistol. I do not know the serial number. The pistol was in my possession a couple of months.

Pistol is Produced.

Witness states the pistol produced is the same type and works the same as a pistol that was in his possession.

The weapon was loaded but not cocked.

Cross Examined

I have never fired the pistol. I never noticed the safety catch being slack. There was a para top scare on at the time of the incident

The Court.

The pistol had a full mag and no round in the chamber. I can not say whether it was possible to have a round in the breech as the safety catch was on. There must be a full grip on the safety catch and trigger pull to fire the

I did not show the accused how to handle the weapon. I showed the accused a loaded mag. I took it for granted the accused knew how to cock the weapon. The accused did not ~~know~~^{ask} ask about the mechanics of the safety catch nor did I tell him. This is the first time I gave this pistol to anyone on guard. I did not see the accused after the injury. I did not get my pistol back.

R.P. 83 (B) complied with.

Pistol Produced and Marked as Exhibit "A".
Witness has stated this pistol is the same type and mechanically the same as the pistol that was in his possession.

D6.

First Witness for Defence.

M11744 Pte. Hurulink A. 5 Bde 7. D.S. amon states.

On 8 Jan 45 I was injured by Pte No Laughlin and am S/Sgt I was on guard that night therefore I went upstairs to get the loan of Pte. Cornells revolver. The first shift was from 1800 hrs to 2000 hrs. The second shift was from 2000 hrs to 0200 hrs. 9 Jan 45. The third shift was from 0600 hrs to 0800 hrs. Bds. O'Shea and I were patrolling up and down in front of the building at 5 F.D.S. At 0645 I was going to make some of my friends for breakfast as the clock was chiming 0645 Bde O'Shea said it was time for me to make my friends

I started to go and at the same time I heard a bang, my foot felt some funny as if someone had kicked it. I started cursing. Bde O'Shea asked me what was the matter. I told him I was hit. I took my hands out of my pocket and felt blood on my leg. Bde O'Shea said "I hope it wasn't my sten." I said "I don't think so." I took the revolver out of my pocket, looked at it, and I saw an empty casing jammed in the breach. I put the pistol back in my pocket. Bde O'Shea helped me into the M. I. C. There I took off my clothes, I also took the empty casing out of the revolver and put it on the table. Capt Bernstein came to look at me, dressed my wound, and asked me how it happened. I told him and I was enac to "F. B. I." I do not know too much about Fire Arms. I loaded the pistol before I went on guard and put on the safety catch but I have never fired the weapon. There was a para tp scare at the time. I felt nervous about going on guard unarmed. I do not know if I had my hand on the pistol or not.

Cross Examined.

I did not make a note of the serial number of the pistol I borrowed.

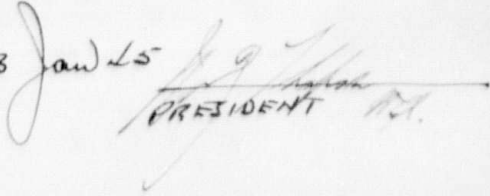
Witness states Pistol marked EXHIBIT "A" is similar to the weapon he had in his possession.

Pt Caswell did not show me the mechanics of the pistol. The safety catch appeared ^{loose} loose.

A request came for stretchy leavers and I applied and transferred. I never examined the pistol during the night. I think I could cock the pistol in a hurry. I figured that danger was eminent and that I needed a weapon. I was not issued with a ~~pistol~~^{weapon} when I went on guard. Drumer told anyone I was carrying a weapon. I never asked to be issued with another weapon.

R.P. 83 (B) complied with.

F3. Plea in mitigation att.

23 Jan 45

 PRESIDENT P.A.

I tested the safety catch and to my knowledge it was pretty loose. I have never fired the pistol before. I cocked the pistol myself. The safety catch moved easily up and down. I do not think the safety catch was loose enough to go off on its own in my pocket. It was a bit loose. I figured it was safe. My hands were in my pockets at time of the shot. My hands were not near the weapon when it went off. It all happened so quickly as I took a step forward that I don't know how it fired. The pistol went off. I was injured.

Accused examined EXHIBIT "A" and states the safety catch on the weapon he had appeared to be loose. ~~that~~ then that on EXHIBIT "A"

The Court.

I was alone when I loaded the weapon. The mag was fixed and loaded. I worked around into the breach by moving the action back. I applied the safety catch and put it into my great coat pocket. This was before my first shift on guard. I never handled the weapon from that time. There was nothing else in my pocket. I had no gloves so I had my hands in my pocket. I can not remember where my hand was in relation to the pistol. This was my fifth hour on guard. I have never fired the pistol and I have been told that one must grip the pistol and apply pressure to the safety catch. I was not doing anything out of the ordinary at the time of my injury. I might have had my hand on the weapon in my pocket during the night. My hand may have been on the pistol. I was in the Calgary Hqs for 2 or 3 years and then trans to R.C.M.C.

Recs of interrogations.

Pfc Kenneth James
1940 at the age of 18 on April
January 1940. He is married and
that said. Some coming out of his
father has died.

He came to this unit 28 May 49
& his service record has been
excellent. He has one minor charge
on his N.F.M. 6. This is his only charge
up to now.

He is a nervous type not the
time of the accident there was a
definite Paratroop warning on
every one was more or less cautious
He probably got considerable moral
support from the fact that he
had a pistol with during his
tour of duty as guard.

It was stated that the stick
struck at the time of the accident
& the accused being nervous may
have involuntarily gripped the
pistol in his pocket, causing it
to discharge severe injury to himself.
May this ~~may~~ be considered
taken into consideration when
sentence is being pronounced.

James Dept.

• Plan of Mitigation.

Pfc Kausch joined the army April 1941 at the age of 18 came overseas in January 1942. He is married but no child that died. Since coming overseas his father has died.

He came to this unit 25 Nov 44. His service record has been excellent. He has one minor charge on his N.F.M. 6. This is his only charge up to now.

He is a nervous type but at the time of the accident there was a definite possibility of warning on any one was more or less cautious.

He previously got considerable moral support from the fact that he had a pistol with during his tour of duty as guard.

It was stated that the clock struck at the time of the accident & the accused being nervous may have involuntarily gripped the pistol in his pocket, causing it to discharge & cause injury to himself. May this ~~may~~ be ~~considered~~ taken into consideration when sentence is being pronounced.

John Dept.

No.M11744 Name KURULUIK, A

Sqn., Battery,
or Company

Corps R.C.A.M.C.

Date of enlistment } 11/4/40 G.C. Badges/

1 Service or Proficiency Pay

M.F.M. 6

FORM 7-41 (11-1-37)
H.Q. 1172-10-100Date of last entry in
Company Conduct SheetNo. and date
of last drunkPeriod not reckoning towards
freedom from extra fine

Sheet No.1

Signature O.C.
Company, etc.

"E.P. McKnight" Lt

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
PREVIOUS SHEET DESTROYED				ON COMPLETION OF TWO YEARS CONSECUTIVE SERVICE FREE FROM ANY ENTRY, WEF 11 Apr 42					
LAST ENTRY NIL				CASES OF DRUNKENNESS NIL					
Field	15 Dec 44	Pte	nil	Sec 40 A.A. "Conduct to prejudice good order etc at 2015 hrs 15 Dec 44 was unfit for duty, due to previous indulgence alcoholic stimulants	Capt RB Rowed Sgt Thomas, H J	10 days pay	16 Dec 44	Major T.C. FR&I Gibson	149 (2)
Certified true and correct copy of original									
<i>B. J. M.</i>									
D.C.S.F.D.S. R.C.A.M.C.									

(P.10)

Summary of Evidence

Summary of Evidence in the case of no. M 11744 Pte Kureluik A., 5 Cdn FDS attached to 11 FDS, a soldier of the Canadian Army Active Force, WOAS charged with conduct to the prejudice of good order and military discipline (AA 5240) in that he with his unit 5 Cdn FDS RCAMC at 0645 hrs. 9 Jan 1945 so negligently handled a Belgian Pistol, Serial no. 727813 Brownings Pistol, as to cause it to be discharged and thereby injured his right leg and rendered himself unfit for ~~service~~ service.

By direction of the Commanding Officer the evidence is taken on oath

First Witness - Capt Burnston P. 5 Cdn FDS sworn states:

On the 9 Jan. 1945 at approximately 0650 hrs. I saw Pte Kureluik in the A & D room of 5 Cdn FDS. where I was on duty as Duty Medical Officer. He had a gunshot wound of his right thigh. There was a small wound of entry on the inner aspect lower third of his right thigh. I did not see any powder burn. His injury was of a minor nature and in all probability there will be no permanent disability.

The accused desires to cross-examine this witness

Capt Burnston

Second Witness - A 35442 Bdr. O'Shea T.P. - 19 Special Employment Coy attached 5 Cdn FDS sworn states:

On 9 Jan 1945 at 0645 hrs. Pte Kureluik as I was patrolling in front of our installation as night guards. At that time I said to Pte Kureluik "It's just about time you woke up your friends" and then at that moment I heard a shot. Pte Kureluik then began to curse about being hit. He unholstered his weapon from his pocket and we both looked at it and then he put it back in his pocket. I helped him into the M & R. where I turned him over to the man in charge.

The accused desires to cross-examine the witness

Bdr. O'Shea T.P.

January a b c d e a b c d e a b c d e f g a f g f g
a f g a b c d e a b c d e f g h i j k l m n o o p o p
o p o p q r s t u v w x y z w y w
w x y z w x y z w x y z a b c v e above above above
above above above above above above above above above
above above above a;slskdkfjffjk a;sls a;
a;slskfjffjkslsla;slskk a;slskikfjghfjfdksls
a b c d e f g h i j k l m n o p q r s t u v w x y z
It is not to be thought of that
Summary Summary Summary of Evidence in the case of
Pte Kuruluil Kurul Kur Kur Kur Kuruluik kkkkk
Kur Kur Kuruluik Kuruluik ul ul uluik ul yl l y ul
ul ul ul
Kur Kur Kuruluik vch ch ch charged charged with
charged chrged ch ch charged with an offence
prdu prr pre pre pre prei prek prejudice preu
prej prej prej prej prejudice prejudice to the
border order discckp dis discipline disc dis
discipline

Chief Witness - M-41957 Pte Caswell L. G. 5 Cdn
F.D.S. sworn states:

On the night of 8 Jan 1945 Pte Kierulink came to my room, asked me for the loan of my ^{Belgian Pistol (200)} because he was going on guard. I gave it to him ~~and at~~ a quarter past seven the following morning I was informed ^{by} ~~by~~ 1/4 Pte Richard that he had been admitted to M.A.R. with a bullet in his leg.

The accused declines to cross-examine the witness.

Pte L. G. Caswell
M41957

The accused was contacted as follows:

Q. Do you wish to make my statement to be given evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in ~~writing~~ ^{written} and may be given in evidence.

A. I want to make a statement

Q. On oath or not on oath

A. On oath

The accused sworn states:

On the evening of 8 Jan 1945 I was informed by Pte McLaughlin that I was on guard duty that night. The staff sergeant also informed me that I was on guard. I went upstairs and asked Pte Caswell for the loan of his revolver. My first shift was from 1800 hrs to 2000 hrs and my second shift from 0001 hrs to 0200 hrs. My third shift was from 0600 to 0800 hrs. Bdr. O'Shea and I were patrolling up and down and I had my hands in my pocket. As the clock was striking a quarter to seven Bdr. O'Shea said: "It's time to make up your friends for breakfast" and at that moment I heard a shot and my feet jumped as if somebody kicked it. I started to run and I put my hand down and felt the warm blood running down my leg and I knew I had been hit. Bdr. O'Shea said "What-

15 Jan 1975
J. H. George

J. H. George, Capt
5 Cl. FDS
Officer Training Squadron

I certify that the foregoing document, containing
in writing the names of the
of this paper, was taken down by me in the presence of the
account of the RP 4 (C) (D) (E) (F) and (G) has been con-
firmed with

The account does not call any witnesses

"The matter" of fact: "In fact, USA, O'Shaughnessy
"I hope it won't say "See Sam" or "Dood": "No, I don't think so."
When I put my hand in my pocket, took out the paper
to look and found that I had found had been found and
that the empty shell was stuck in the back of the
just the number back in my pocket and because I couldn't
call R.S. O'Shaughnessy in with the A.D. Program of our
unit. When I took the number out of my pocket, removed the
empty shell and put the number on the table. When I took off
my clothes and I saw that I was hit. Capt. B. Watson came
in to look at me, grabbed me around the neck and had
me escorted to 11 FDS. After I was taken to No. 111174

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No M11744 Pte Kuruluik, A 5 Cdn F.D.S. RCAMC attached to 11 Cdn F.D.S., a soldier of the Canadian Army Active Force, WOAS charged with conduct to the prejudice of good order and military discipline (AA Sec40) in that he, with his unit 5 Cdn FDS RCAMC, at 0645 hours 9 Jan 1945 so negligently handled a Belgian Pistol, Serial No. 789813 Browning's Patent, as to cause it to be discharged and thereby injured his right leg and rendered himself unfit for service.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS: Capt P Bernstein 5 Cdn FDS RCAMC sworn states:

On the 9th of January 1945 at approximately 0650 hrs I saw Pte Kuruluik in the A & D Room of 5 Cdn FDS where I was on duty as Duty Medical Officer. He had a gunshot wound of his right thigh. There was a small wound of entry on the inner aspect lower third of his right thigh. I did not see any powder burns. His injury was of a minor nature and in all probability there will be no permanent disability.

The accused declines to cross-examine this witness.

P. Bernstein Capt

SECOND WITNESS: A35492 Bdr O'Shea, T.P. 19 Cdn Special Employment Coy attached 5 Cdn F.D.S. sworn states:

On the 9th of January 1945 at 0645 hours Pte Kuruluik and I were patrolling in front of our installation as night guards. At that time I said to Pte Kuruluik "it's just about time you woke up your friends" and then at that moment I heard a shot. Pte Kuruluik then began to curse about being hit. He removed the weapon from his pocket and we both looked at it and then he put it back in his pocket. I helped him into the M.I.R. where I turned him over to the man in charge.

The accused declines to cross-examine this witness.

Bdr. O'Shea S.P.

THIRD WITNESS: M41957 Pte Caswell E.G. 5 Cdn F.D.S. sworn states:

On the night of 8 January 1945 Pte Kuruluik came to my room, asked me for the loan of my Belgian Pistol because he was going on guard. I gave it to him.

The accused declines to cross-examine this witness

E. G. Caswell

The accused was cautioned as follows:

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I want to make a statement

Q On Oath or not on oath?

A On Oath.

The accused sworn states:

On the evening of 8 January 1945 I was informed by Pte McLaughlin that I was on guard duty that night. The Staff Sergeant also informed me that I was on guard. I went upstairs and asked Pte Caswell for the loan of his revolver. My first shift was from 1800 hrs to 2000 hrs and my second shift from 0001 hrs to 0200 hrs. My Third shift was from 0600 to 0800 hrs. Bdr O'Shea and I were patrolling up and down and I had my hands in my pocket. As the clock was striking a quarter to seven Bdr O'Shea said "It's time to wake up your friends for breakfast" and at that moment I heard a shot and my foot jumped as if somebody kicked it. I started to curse and I put my hand down and felt the warm blood running down my leg and I knew I had been hit. Bdr O'Shea said "What is the matter" and I said "I'm hit". Bdr O'Shea then said "I hope it isn't my Sten Gun" and I said "No, I don't think so". Then I put my hand in my pocket, took out the pistol to look and found that one round had been fired and that the empty shell was stuck in the breech. I then put the revolver back in my pocket and because I couldn't walk Bdr O'Shea helped me into the A & D Room of our Unit. There I took the revolver out of my pocket, removed the empty shell and put the revolver on the table. Then I took off my clothes and I saw that I was hit. Capt Bernstein came in to look at me, questioned me concerning the injury and had me admitted to 11 P.D.S.

The accused does not call any witnesses.

Pte G. Cummins No. H11144

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the accused and that R.P. 4 (c) (d) (e) (f) and (g) have been complied with.

J. H. George, Capt

(F.H. George) Capt
5 Cdn FDS RCAMC

In the Field
15 Jan 1945

LIST OF WITNESSES FOR THE PROSECUTION AND DEFENCE

WITNESSES FOR THE PROSECUTION:

1. Capt P Bernstein, 5 Cdn FDS H.C.A.M.C.
2. A35492 Bdr O'Shea, T.P. 19 Cdn Special Employment Coy
attached to 5 Cdn FDS RCAMC
3. M41957 Pte Caswell, E.G. 5 Cdn FDS RCAMC

THERE ARE NO WITNESSES FOR THE DEFENCE

EXHIBIT "A" Belgian Pistol Serial No 789813 Browning's Patent
in the case of M11744 Pte Kuruluik, A. 5 Cdn PDS RCAMC

J. H. George, Capt
5 Cdn F.D.S.
Officer Taking Summary

LIST OF WITNESSES FOR THE PROSECUTION AND DEFENCE

WITNESSES FOR THE PROSECUTION:

1. Capt P Bernstein, 5 Cdn FDS R.C.A.M.C.
2. A35492 Bdr O'Shea, T.P. 19 Cdn Special Employment Coy
attached to 5 Cdn FDS RCAMC
3. M41957 Pte Caswell, E.G. 5 Cdn FDS RCAMC

THERE ARE NO WITNESSES FOR THE DEFENCE

I wish to have an Officer assigned by the Convening Officer
to represent me at my trial.

W. A. Kumbaid No. 44744

I wish to have an Officer assigned by the Convening Officer
to represent me at my trial.

St. A. Kinnick No. 111144
6

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO (1)
 (1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address (1)
 (1. RP 37(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken (1)
 (1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed (1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST charge(s) (2) The Court is closed, and considers the submission (2) The Court is re-opened, and the President announces that the submission is disallowed on the FIRST charge(s), and allowed on the other charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s) (1)
 (1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
 NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence (1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination (2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination (2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony (1) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
 Ans. Evidence on Oath Do you intend to call witnesses on your behalf?
 Ans. no Are they witnesses as to character only? Ans. N/A
 (1. RP 115. 2. RP 40(A), see 80(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed (1)
 (1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(a).)

D7. The Court is closed to consider the finding(s) (1) The finding(s) of the Court is (are) recorded in Part I of the Schedule (2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the first charge(s), being subject to confirmation, will be promulgated later (1) or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed (2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character (1)
 Ans. NO
 (1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service (1), and certified true copy (copies) of Conduct Sheet(s) (2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(j) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively (2)
 (1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment (1)? Ans. YES (2)
 (1. RP 37(C), 44(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(f) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated (1)
 (1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence (1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any (2)
 (1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 187, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 563. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4
SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M 11744 PTE KURULUIK A.

Charge.	Plea.	Finding.	
(Insert "alternative" where applicable.)	(See Instrs p 2.)	(See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st <u>AA SEC 40</u>	<u>NOT GUILTY</u>	<u>GUIATY</u>	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 403 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in last of kit see RP 44 fn 6.)

At present under sentence for _____ beginning on (date) _____
 (1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)
 Time in confinement awaiting present trial a total of _____ days, of which _____ days were spent in hospital (4)
 (1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO SUFFER FIELD PUNISHMENT FOR 28 DAYS
TO FORFEIT ALL ORDINARY PAY FOR A PERIOD OF 28 DAYS.

(Sgd) _____ 23 Jan 45. (Sgd) _____
 Judge-Advocate, if any. Day awarded. President. (RP 45, 50)
 (See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirm the finding and sentence of the court.

~~That the accused be not committed to prison or detention barracks until further orders.~~ (AA 57A. Delete if not used.)

Date 27 Jan 45 (Sgd) _____
 Commanding _____
 Confirmer, C.C.R.A. 2 Can Corps
 Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. M-11744 PTE KURULUIK A Date. 30 JAN 45 Signature of Offr. [Signature]
Promulgated and extracts taken. O.C. 11 Chw F.D.S.
 R.C.M.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALED.

95 D. De Juralink A.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Twenty-third day of September, 1941. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 5 Cdn Inf Bde

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial by reference to a superior officer.~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~I am unable to appoint~~
~~three officers to form the court.~~
~~two officers as President~~
 for the following reasons, namely:

PROCEEDINGS REVIEWED

7/11/41
 & 1/2/42
 Correspondence to be PINNED here.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

Note—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and rank of the unit to which they belong may alone be named. In the latter event, the rank, name, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	D.G. McLaughlin	Can Highrs.

Members.

Rank.	Name.	Regiment.
Captain	R. Tremblay	R 40 Mts.
Captain	J.W. Knox	A.H.C.
Captain waiting	B. McKenzie	Can Highrs

* Signed *J.M. Wheeler*
 Brigadier
 Commanding 5 Cdn Inf Bde.
 Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M-11744 Pte. Kuruliuk, A. Calg Highrs. A soldier of the Cdn Active Forces Overseas.	<u>FIRST CHARGE</u> A.A. Sec. 10 (1)	Guilty	Guilty	Confirmed but permit forty five days to the subordinate ninety days. to undergo detention for a period of three months and stoppages of \$1-4-9 1/2 (One Pound Two Shillings ninepence halfpenny).
	<u>SECOND CHARGE</u> A.A. Sec. 40	Guilty	Guilty	
	<u>THIRD CHARGE</u> A.A. Sec. 40	Guilty	Guilty	
<u>SEE CHARGE SHEETS</u> Annexed Marked G				

to undergo detention for a period of ~~three months~~
and
stoppages of \$1-4-9 1/2 (One Pound Two Shillings
ninepence halfpenny).

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :-

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary) :-

(Signed) Whitehead Brigadier
Commanding 5 Cdn Inf Bde
Concerning Officer (c)

(Signed) MacLaughlan
Major
President

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialed by him.

Evidence and Charge Sheets (if necessary)
to be PINNED here.

I certify that the above Court assembled on the Twenty Sixth
day of September, and duly tried the persons named in
the Schedule, and that the plea, finding, and sentence in the case
of each such person were as stated in the third and fourth columns
of that Schedule.

B.
Certificate of
President as to
proceedings.

I also certify that :-

1. The members of the Court

2. The witnesses

~~* (3. The interpreter)~~

* (4. The officers under instruction)

were duly sworn. He stood hand written

Signed this Twenty sixth day of September 19 41.

MacLaughlan
President of the Court Martial.

* Omit if not
applicable.

* See footnote
(b) on page 762
M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been
complied with.

Signed this 9 day of Dec 19 41.

Maach

President of the Court Martial.

C.
Certificate in
case of death
sentences.

I have dealt with the findings and sentences in the manner
stated in the last column of the Schedule, and, subject to what
I have there stated, I hereby confirm the above findings and
sentences.

D.
Confirmation.

* To be omitted
unless penal
servitude, im-
prisonment or
detention having
been awarded, the
Confirming
Officer either has
no authority to
commit to prison
or detention
barrack, or,
having such
authority,
recommends
suspension.

* (I direct that the soldier named in the margin be not com-
mitted to prison or detention barrack until further orders.)

Signed this 9 day of Dec 19 41.

B. C. O. O. O.

Confirming Officer.

Promulgated and extracts taken in the case of M 11744 Pte Kuruliuk, A.2.

(a) (Dated) 13 Oct 41 (Signed) M.M.

Promulgated and extracts taken in the case of M 11744 Pte Kuruliuk A.2.

(Dated) 28 Oct 41 (Signed) Whitehead
COMD 5 CDN INF BDE

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer
need only sign once.

9

THE CALGARY HIGHLANDERS CA(O)

13 October 1941.

This is to certify that M/11744 Pte. Kuruliuk A.Z., is free from contagious and communicable diseases, and vermin, And is fit, ~~not~~ to undergo Forty-five (45) days detention.

(If unfit strike out the unneeded word, and state reasons below.)

Alec Lerner Capt.

.....RCAMC
Alec Lerner Capt.
Medical Officer,
The Calgary HighlandersCA(O)

3

I certify that No. M/11744 Pte. KURILUIK A.
is fit to undergo trial by Courts Martial.

Alfred Lewis Capt.
M.C. Calg. Highrs. C.A.(C).
26/9/41

G
CHARGE SHEET

The accused, M 11744 Pte. Alex Kuruluk, Calgary Highlanders, C.A.(D) soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

A.A. Sec. 15 (1)

W.O.A.S. Absenting himself without leave, in that he at Talavera Bks. on 19 June 1941, absented himself without leave from 0800 hrs. 19/6/41, until 0030 hrs. 28/8/41. The cost of returning the accused to his unit was £ 114:9½.

SECOND CHARGE

A.A. Sec. 40

Conduct to the prejudice of good order and military discipline, in that he, when apprehended, on Aug 28 1941, was not carrying his Respirator, A/Gas and Steel helmet.

THIRD CHARGE

A.A. Sec. 40

An act to the prejudice of good order and military discipline, in that he was in possession of a pass which had been altered at 28/8/41 at Leicester.

HCAHenny Major
Cmde. The Calgary Highlanders,
Canadian Army (Active)

Dated this day
of Sept. 1941

TO BE TRIED BY F.C.C.M.

Officer in Charge
Brigadier
Cmde. 4th Canadian Div. 4/41

6

Under close arrest for 21 days (Period) 0030 hrs, 28-8-41, to 0030 hrs, 18-9-41). Apprehended 0030 hrs, 28-8-41,

Under close arrest for 21 days (Period) 0030 hrs, 28-8-41, to 0030 hrs, 18-9-41). Apprehended 0030 hrs, 28-8-41,

HCAHVVVVV
(H. C. A. Hervey) Major,
O.C. Calg. Highrs. C.A.(6).

7

PROCEEDINGS OF A FIELD GENERAL COURT
MARTIAL, HELD AT ALDENSHOT, HANTS ON
26 SEPTEMBER, 1941

TRIAL OF NO. M11744, Pte. KURULUIK, A., Calg Highrs.

PROSECUTOR: Lieut. Robinson, Calg Highrs.

DEPENDING OFFICER: Lieut. Kitchen, Calg Highrs.

SHORTHAND REPORTER. DS4020, C/Sgt. J. H. Spence, H.Q. 2 Cdn Div.

-
1. The Order convening the Court is read to the accused.
 2. The accused is asked the following questions:
 - Q 1 Do you object to being tried by me as President, or by any of the Members whose names you have heard read over?
 - A 1 No, sir.
 - Q 2 Do you object to having the evidence taken down in shorthand?
 - A 2 No, sir.
 3. The President, Members of the Court and shorthand writer are sworn.
 - 4.(a) The accused answers to his name and number and is duly arraigned.
(b) The accused pleads "Guilty" to the 1st, 2nd and 3rd charge.
 5. Rule of Procedure 35(B) is complied with.
 6. The summary of evidence is read.
 7. The Prosecutor files A.P.B. 296 and M.F.M. 6, which are formally admitted by the defence.
 8. R. P. 40 is complied with and the accused elects to give evidence under oath.

The accused, M11744, Pte. Kuruluik, A., Calg. Highrs. having been duly sworn, states:

When I went on my leave to London I met some people, as I went down to Leicester with them. I was a few days over my leave and I was a little afraid to come back and I kept putting it off and off and I told them I was coming back at the end of September, so I intended to come back and then I got caught.

- Q 3 This friend that you met in London, was it a lady or a gentleman?
- A 3 A gentleman.
- Q 4 And you proceeded from London to Leicester with this man?
- A 4 Yes, sir.

THE PROSECUTOR DECLINES TO CROSS-EXAMINE THE WITNESS.

THE DEPENDING OFFICER: The accused signed the attestation paper in the C.A.S.B. in April, 1940. His age at that time was 17. He stayed with the Calg Highrs and proceeded to Camp Shile, Manitoba with the unit and after being there until the end of June was sent back to the Regimental depot at Calgary and put in what is commonly called the "Boys Battalion" being under the required age. He was transferred from there to our reinforcement centre at Curvie Barracks. The first draft that came over for reinforcements for our unit the accused came with them. When questioned by me a few days ago as to whether he would like to plead guilty or not guilty to this charge he asked me which I considered the best, under the circumstances and I advised him to plead guilty and he agreed with me, knowing that it would save a lot of time and trouble for all concerned. The background, the life of the accused before he came

into the army, he was unfortunate in having a very strict parent, who kept him down and he was not allowed to do anything and on coming into the Army the accused was a very good soldier, as his crime sheet shows, he had no crimes with the unit. After being sent back to Currie Barracks he had a little trouble. He has had 29 days awaiting trial by Court Martial, and his conduct has been very good. In closing I would like to add that now he is only 19 years of age and I am sure sir, he has learned his lesson in the time spent awaiting trial.

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE

I CERTIFY THAT THE FOREGOING IS A TRUE RECORD OF THE PROCEEDINGS IN THE FOREGOING TRIAL, TAKEN BY ME IN SHORTHAND AT THE TIME AND PLACE MENTIONED.

[Signature]
(324030) S. Sgt. F. L. Spence

SUMMARY OF EVIDENCE

in the case of - M 11744 Pte. Alex Kuruluik, Calgary Highlanders, C.A.(C)

1st Witness:

M 11490 Cpl. Marsh, H.J., having been duly sworn, states:- "Sir, I am No. M 11490 Cpl. Marsh, H.J., Coy. Orderly Room Clerk of 'B' Coy. Calgary Highlanders, C.A.(C). On the 12th of June 1941 I made out a pass for Private Kuruluik from 0800 hrs. to 0800 hrs. 19 June 41 to proceed to London from Talavera Bks. Aldershot. This pass was never returned to the Coy. Orderly Room and to the best of my knowledge Private Kuruluik has never returned to Coy." The pass number on this pass is 100000. I issued to the accused but it has since been altered. The accused declined to cross-examine this witness.

2nd Witness:

M 10771 Cpl. Melver, A., having been duly sworn, states:- "Sir, I am No. M 10771 Cpl. Melver, A. 'B' Coy. Calgary Highlanders, C.A.(C). On 19th June 1941 inxx at Talavera Barracks, Aldershot, I was acting Coy. Orderly Sergeant. Private A. Kuruluik was due back at 0600 hrs. on the 19th June, and his absence was noted on the absentee report and the Battalion Orderly Room was notified. To the best of my knowledge he never returned and the first time I have seen him since his going on leave on the 12th of June 1941, was in the Battalion Guard room on 1st September, 1941."

The accused declined to cross-examine this witness.

3rd Witness:

M 11225 Cpl. Duncan, J.M., having been duly sworn, states:- "Sir, I am No. M 11225 Cpl. Duncan, J.M. 'B' Coy. Calgary Highlanders, C.A.(C). On the date Private Kuruluik proceeded on leave I was acting as Platoon Sergeant and prior to this I had been his section leader. On the date on which his leave had expired namely, June 19th, he failed to return. I never saw him again from that date until Saturday, August 30th, 1941, at which time he was brought in by Sgt. Florence and placed under close arrest. At this time I was in charge of the Battalion Guard."

The accused declined to cross-examine this witness.

4th Witness:

M 10714 Pte. Drew, M.J., having been duly sworn, states:- "Sir, I am No. M 10714 Pte. Drew, M.J. While acting as C.S.E.S. of 'B' Coy. on 1st September 1941 I checked Private Kuruluik's kit and found it deficient to the value of £2:14:1 made up of the following items:-

Brushes, cloth.	1	2:6 d
Combs, hair	1	2:-
Gloves, woolen,	1 pr.	1:11
Socks,	1 pr.	1:11
Shorts, undeg cotton,	1 pr.	2:1
Helmets, steel	1	9:6
Respirator, A/Gas complete		16:6
ointment, A/Gas		5:9
Eye shields	1 pkg	2:3
Blanket, 1096,	1	12:0
Gallet, A/Gas		1:9
Gym Shorts,	1 pr.	2:1
Gym Sweater	1	1:11
		Total £21:5:11 d."

The accused declined to cross-examine this witness.

5th Witness

M 11277 Sgt. Florence, J. having been duly sworn, states:- "Sir, I am No. M 11277 Sgt. Florence, J., Provost Sergeant, Calgary Highlanders C.A.(0). On the 30th August 1941 at 2300 hrs. I was instructed to proceed to reception Camp No.30 where I received into my custody Private Kuruluk and a sealed envelope containing his particulars. Upon my return I reported to the Orderly Officer, Lieut. R.E. Cross, who received the envelope and instructed me to hold the prisoner in close arrest."

The accused declined to cross-examine this witness.

6th Witness

Lieut. Cross, R.E., having been duly sworn, states:- "Sir, I am Lieut. Cross, R.E. of the Calgary Highlanders, C.A.(0). On August 30th, 1941, I was Battalion Orderly Officer on duty in the Battalion Orderly Room. At approx. 1900 hrs. Sgt. Florence reported to me that with Private Kuruluk and certain documents in a sealed envelope. On opening the envelope, I ordered Private Kuruluk to be placed in close arrest. The envelope contained certain documentary evidence, from the C.M.P. at ~~Leicester~~ Leicester, namely, that private Kuruluk had been apprehended in possession of a document purporting to be a pass, without a respirator A/Gas or Steel helmet and he had admitted being absent without leave from his Unit. These documents were signed by L/Cpl. Maguire, D., C.M.P. and L/Cpl. Matthews, James L., C.M.P. and dated 28 Aug 41 at Leicester. There were also certain other particulars concerning expenses and a receipt for the prisoner. The cost of his return, including railway fare, meals, bed, bus fares, amounted to £14:9⁸. I now present the above mentioned documents."

The accused declined to cross-examine this witness.
These documents will be taken as Exhibits A, B, C.

EXAMINATION

The accused was then questioned as follows:- "Do you wish to make any statement or to give evidence upon oath. You are not obliged to say anything or to give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

Answer by the Accused:- "No, Sir, I have nothing to say."

Taken down by me at ~~...~~...this 2nd day of September, 1941, in the presence of the accused. Rule of Procedure four complied with.

(Signed) H. J. B. [Signature]

CHARGE

Army Form 1252

CALGARY HIGHLANDERS

Regiment

"B"

Company

CHARGE against No. M. 11466

Name A. KURUKUK

Date of Offence ? 19/6/41

Place ALBERSHOT?

W.O.A.S. (1) Absent until apprehended by the Military Police at the Y.M.C.A. on 20th Aug. 41. LONDON RD, at about 0030 hrs, (2) Having in his possession a document purporting to be a

pass. (3) Improperly dressed i.e. Not wearing a respirator anti-gas or steel helmet

Names of Witnesses: 1/CO D. McGUIRE, C. M. POLICE.
1/CO J. MATTHEWS, C. M. POLICE.

Signature of O.C. Battery, Squadron, Troop or Company

Ronald B. Lewis
4/1

Punishment Awarded

By whom Awarded

Adjutant.

Statement of EVIDENCE in the case of

NO. M.11746

P/S A KURULVIK,
"B" COMPANY,
CALGARY HIGHLANDERS,
TOLVERRY BARRACKS,
ALDRSHOT.

Sir,
At LEICESTER on the 28th AUGUST 1941 at about
0030 hrs, acting on information received and
in company with 1/cpl MATTHEWS, C.M.P. I
visited the Y.M.C.A. where I saw the
above named soldier. On being cautioned
and questioned he produced the attached
A.F.B. 296 and later admitted being absent
from his unit. I apprehended him and
later conveyed him to the R.A.S.C. guard
room where I handed him over to
the N.C.O. 1/c guard to be detained
awaiting escort. He was not in possession
of respirator anti-gas or steel helmet

LEICESTER
28th AUGUST 1941

D. McGuire 1/cpl
C. M. POLICE.

Sir, I have read over and corroborate the
above statement

REMARKS

LEICESTER
28th AUGUST 1941

James L. Matthews 1/cpl
C.M. Police

The unit has no complaints 1/cpl.

Regt. No: M-11744
 Rank: Pte.
 Name: Murduik A.
 Regt: Calgary Highlanders of Canada.
 Unit: _____

The following expenses were incurred in apprehending and returning the m/a soldier to his unit from Leicester.

DATE	PARTICULARS	AMOUNT		
29 Aug. 41.	Escorts return fare from London ^(Portion) to Leicester.	0.	10.	0.
	Prisoners single fare to London from Leicester.	0.	7.	0.
	Prisoners single fare from London to			
	Escorts expense for bed, meals, bus fares and meals for the prisoners. ^(Portion)	0.	7.	3.
	TOTAL -- £	1.	4.	3.

I certify that the above statement of expenses is correct and that the amounts are fair and just.

M. E. Byers Lt
 Capt.
 for (V. Harris, Coed) many
 O.A.P.F. Canadians.
 CANADIAN PRISONERS' COMMISSION

NOTE.

No reimbursement for this account is to be sent to our office from your goodself, as the amount has been paid from petty cash and charged to Public Funds.
 If the accused is found guilty a stoppage of pay should be put through your units Part 11 Orders.

NE11744

Name: Pte. Kuruluik, A.Z.

Sgn. Battery, Company

THE CALGARY HIGHLANDERS
Corps C.A.(O)

enlistment 11/4/40

G.C. Badges
Signature O.C.
Company, etc.

Service or Proficiency Pay

Character

(A.F.B. 117)
5004-8-19 (176)
H.Q. 177-41-18

Date of last entry in Company Conduct Sheet

Nil

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No.

Date	Date of offence	Rank	Case of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order depending with trial	By whom awarded	Remarks
"CURRIE" Bks.	15/11 1940	Pte.		A.W.L. from 2130 hrs 15/11/40 to 0600 hrs 28/11/40 (Absent 12 days 8 hrs 30 min)	L/Cpl Dunbar Sgt. Hardisty	14 days C.B.	28/11/40	MAJOR H.C.L. Gillman.	Forfeits 13 days pay under FR-1-149. 1-A
"CURRIE" Bks.	5/12 1940	Pte.		1. Being in unlawful possession of Govt. Prop. i/e 5/12/40 being in possession of 1RD. 303 Ball Ammn. 2. An act to prejudice of good order and military discipline i/e loading 1 live round into the chamber of a rifle and closing the bolt, while in barrack room.	Pte. Aneeland. Pte. Kirk. Cpl. Chapman	168 hrs. Detention.	6/12/40	MAJOR H.C.L. Gillman	

CERTIFIED CORRECT COPY.

C. Legator Capt. 1940

(Substitute for A.F.B. 296)
of M.F.B. 155

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No M1744 NAME Pte. Alex Kurulnik UNITED ARMY Highlanders, C.A.(0)

AGE 19yrs. MARRIED OR SINGLE Married NO. OF DEPENDENTS one

DATE OF ATTIGATION 11 April 40

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL MILITARY 23 HOSPITAL TOTAL 29
DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

Nil

A CERTIFIED TRUE COPY OF M.F.B. 6 MUST ACCOMPANY THIS FORM

(Officer in Charge)
L. J. ...
OFFICE OF THE ADJUTANT GENERAL
UNITED STATES ARMY

Dated at ...

This 3 day of ... 1941

(To be dated and signed as of date of trial)

Mach

3 Sep 41

22

Sir.,

I would like as my defending officer, Lieut. G.A. Kitchen,
Clagary Highlanders. C.A.(C)

Alex Kumbuk
MI1744 Pte. Kuruluk, A.

5 B 103

Pt. Huryle L.

FIELD GENERAL COURT-MARTIAL

OFAB (in lieu of AF41)
G.P. & S. 1508 (2004)

Comd of Lt Col R B Somerville, A/Comd 11 Can Inf Bde dated 7 Feb 45

WEEWOOD
22 MAR 1945
JAG BRANCH
C.M.H.Q.

ACCUSED.

Number of (a) Prmt R. (b) Appmt, A/R or A*Appmt. Full Christian Names. Surname. Unit.

Stephen KURVLO IRC
94311

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.
M.H.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 10 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 24176-

A1. The President, Members, waiting Member, JA, if any, and Ofrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.⁽¹⁾ The Court is satisfied that it is properly convened and constituted⁽²⁾, accused is (are) amenable to military law, and each charge discloses an offence.⁽³⁾

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 1-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.30 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.⁽¹⁾ The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.⁽²⁾

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to _____ as interpreter? Ans Yes
The interpreter is sworn⁽⁴⁾ Do you object to _____ as shorthand writer? Ans Yes
The shorthand writer is sworn.⁽⁴⁾

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.⁽¹⁾ President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.⁽²⁾
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Ofrs under instr, if any, are sworn.⁽¹⁾ The following are the ranks, names and units of the ofrs comprising the Court:

President	<i>Maj J. H. White</i>	<i>Col R. J. C.</i>
Member	<i>Maj. Shaw</i>	<i>2nd Lt J. R. C.</i>
Member	<i>P. J. Stephen</i>	<i>8th Bn</i>
Judge-Advocate		
Prosecutor	<i>Lt J. D. Watson</i>	<i>2nd Lt J. R. C.</i>
Defending Ofr	<i>G. H. C. Thomas</i>	<i>2nd Lt J. R. C.</i>

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Ofr a lawyer? Ans No⁽²⁾

(1. RP 26, 27, 109, 111. List of ofrs under instr will be returned separately with proceedings for information of Conv Ofr.)
(2. If Pros a lawyer and Def Ofr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 33)

A8. The accused _____ before arraignment makes(s) (no) plea⁽¹⁾

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 24, 35(A), 112), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.⁽¹⁾ The accused does (do) not object to any charge.⁽²⁾ There is no amendment to be made to the Charge Sheet.⁽³⁾ The President records the pleas in Part 1 of the Schedule.

(1. RP 21, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form _____

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

M.H.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A)). As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H)). Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

- I. If pleas to all charges are GUILTY, use Record Form B below.
 - II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.
 - III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,
 - (a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A)).
 - (b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).
3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 403; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B); and of witnesses see RP 83-85; calling or re-calling of witnesses by Court see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)⁽¹⁾, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses to character and make an address in mitigation of punishment.⁽²⁾

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)⁽¹⁾. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty⁽²⁾, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined⁽³⁾, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.⁽⁴⁾

President to accused: Do you wish to make a statement? Ans. _____⁽⁵⁾
 (1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.
 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement⁽¹⁾. The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.
 (1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.⁽¹⁾

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.⁽¹⁾

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing at Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.⁽¹⁾

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.⁽¹⁾

(1. Under B5 such parts only of the Summary of Evidence are read to the accused as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, Blisell Private Stephen KURYLO, The Irish Regiment of Canada, a soldier of the Canadian Army placed on Active Service, is charged with:-

FIRST CHARGE
Sec 8 (1)

WHILE ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE

in that he,

In the Field, struck with his fist on the chest, Lieut J.E. Forrester, his platoon Officer.

SECOND CHARGE
Sec 40

WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

In the Field, at 1600 hrs 14 Jan 45, created a disturbance in the Front Line.

THIRD CHARGE
Sec 9 (2)

WHILE ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he,

In the Field, 14 Jan 45, when ordered by Lieut J.E. Forrester to go downstairs to his room to get some rest, refused and said "Nobody was going to tell him what to do." or words to that effect.

FOURTH CHARGE
Sec 40

WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

In the Field, at 1620 hrs 14 Jan 45, stabbed a member of his Coy with a knife.

In the Field
31 Jan 1945

L H C Payne
L H C Payne Lt Col.
Comd The Irish Regiment of Can.

"To be tried by Field General Court Martial."

Field
7 Feb 45

R B J Macvicar
(R B Scmerville) Lt Col
A/Comd 11 Can Inf Bde

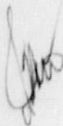
The following is the correct form of medical certificate to
be used in trial. The enclosed sheet is stamped the morning of each day
of trial and a certificate is provided on each such day.

My certificate was I have this morning received No B115211
Pte. Kurylo S.

and it is attached to the file — to indicate trial by substitution.

Section Field

Date 10 Feb 45



Morham Ent
Medical Officer

(2 1/2 1/2 1/2)

Case Against B115 211 Pte S. Kurylo

The Inst. Act. of Canada. (1)

Just Witness for Accused

Lieut J. E. Forest, The Inst. Regiment
of Canada.

10/2

I know the accused. On 14 July '45
I was present 16 Pl of which accused
was a member. I was with my pl at
about 1600. We were moving to an
open place behind the bank of the
dam about 2000 yds from the
enemy. There was intense rifle & machine
fire.

On 14 July my Coy and had
orders to move to another house.
I made a recon of another house which
had been a C. I. P. - I found some of
my men in it playing the piano - they
had been drinking. I said they were
to have no more to drink. The accused
was a member of this party. I went
outside to complete the recon & started
to move in some equipment. At this
time accused started to urinate on
us from an upstairs window. I
could see & recognize accused. I
went upstairs to ~~the downstairs~~ & asked
accused downstairs. He refused & said
no one was going to tell him what to do.

(2)

I then called up 2 young men & told them to keep accused quiet in one of the rooms there. This they did. I went down accused some minutes later downstairs crossing the Court Yard & heading for the main doorway. I stepped in front of him & told him he was not to go out. He attempted to get past me & tried to shove me out of the way with his fists. I stopped him however. The 2 Saldies I had assigned to look after him said they couldn't keep him upstairs. To prevent him from leaving I stood between him & the door. He pushed me with his fists. ~~During this time accused~~

I then informed accused that he was under close arrest & he was to go to a downstairs room. He became abusive and I got a third man to assist the other two. A scuffle followed & they took accused back into the house. I then picked 2 big men to handle accused.

The next time I noticed him 2 or 3 minutes later he was throwing a bottle from an upstairs window. The pl. sub. took him under control & he disappeared from the window. I then

24
Went to Coy. H². to inform the Coy. Cmd.
I then returned to the plⁿ about 20 min
to 1 hr later. I then found one of my
men ^{1 to 2 yrs} bleeding about the eyes & doubled
up & inquired as to what had caused
it. I sent Young to the R. A. P. & found
Kurylo had been put under control. I
phoned the Coy. Cmd. who instructed me,
and as a result of further evidence
we were forced to tie him up. We then
summoned the Provost & took him to the
R. A. P. I then returned to the plⁿ.

X exam.

Q - How many sections were drunk?

A - Two - I had last seen them
about 2 hrs before.

Q - Did accused ever act the way
before?

A - I had only had the plⁿ since
Jan 1 / 45 & had had no trouble
with the accused.

Q - Was he drunk?

A - I don't know.

Q - Did accused push you?

A - Yes. I stopped him by standing
in front of him.

Q - Did you see accused throw the
bottle out of the window?

A - No, I didn't.

(4) Q. - When you first encountered accused
in the house, was he capable of going
into action?

A. - No.

Q. - By the Court - When you first found
the men drinking - was there much
wine in evidence?

A. - Two bottles only. Accused was the
only man irresponsible. All the others
were quite capable of carrying out their
duties.

Second part of the present

B. 51958 Sgt. William A.V., platoon
sergeant 16 Pl. Irish Regt of Canada.

On 14 Jan '45 the pl was on the
Lammecost of Mezzano. I know the
accused. On that date about 1000
hrs. I saw accused in a drunken
and argumentative mood in the
Court yard for a while ^{he} there in. He
was arguing with Lt. Forester. Mr.
Forester took him to go upstairs. He came
and into Corfield's & said he was
was going to tell him what to do.
He was standing in front of Mr. Forester
who was with his back to the door.
Mr. Forester asked the Dean & St. Pierre
and myself to act as an escort.
We took him into the building where

5) I left him with the other two. I didn't see him for 10 minutes. I went down the stairs in the building. I entered the room & saw the Young & accused being into each other. Mr. Forester then ordered me to take him up. He was yelling & saying he wasn't drunk. He was taken to the R. A. P. & from there turned over to the Provost. There were several threats uttered by accused to me.

A cross

Q - Was he responsible for his actions?

A - At times he appeared to be. He was in a drunken condition.

By the Court.

Q - How long have you known accused?

A - Only about a week. I had no trouble with him during that

^{time}
Under witness for Prosecution

B 43210 Pte Campbell, The Airb Regiment
Merida

On Jan 14/45 I was Coy warden for D Coy. I know the accused. On that date in the afternoon, accused was very drunk. Mr. Forester put me in charge of him while he sent the Coy. Cmd. I kept him in a room in our house. His conduct was very abusive

6

There were other men in the place the same.
A quarrel started between the young &
accused. They were going to fight but it
was broken up. Mr. Forester returned
& on his advice was tied accused up.
We sat him in a chair until the court
arrived.

X exam.

Q You could not see what took place
between accused & young?

A No. There was a great deal
of noise & my view was obstructed.

Q By the Court - Do you know accused?

A At that time I scarcely knew
him.

Joint letter for presentation

36723 Pte Young & Co, The High
Regiment of Canada.

I belong to # 16 Pl, The R.C.C. - I
knew the accused. On 14 July '45

in the afternoon accused was
causing a disturbance in the court
grounds the pl. The Wier
ordered the Deen & Campbell & men
to take him into the house. When
took him to one of the rooms. Accused
started to argue & struck me
with a knife above the eye. Then

... included me among & told me to get
out of the room. He then hit me with
an open knife which he had been
holding behind his back. He struck
me above the eye. I then left the room
I didn't see him again.

X exam

Q - Who else was in the room?

A - A good many fellows.

Q - Had you seen this knife before?

A - Only when he struck me. It was
an essie knife.

Q - Had you been to the room in the afternoon?

A - No - I was in a different house. I didn't
see him until I saw him causing
a disturbance with the Forester.

Q - Was he drunk on your opinion?

A - I would say he was drunk.

Q - How long have you known accused?

A - Since I came to the regiment
on Dec 23. I never had any
trouble with him before.

Q - Boston Court - how did the agent
between you & accused start?

A - It started out of thin air. He
said he wouldn't have any business
to do with me.

(8) Justice Letters: for Prosecution.

A 109088 Pt. St. Pierre H.D. -

The Justice Act of Canada.

Incriminate the accused.

On July 14/45 I sent a accused
at about 1600 hrs. I came into the
Court yard of the house of St. Forests
ordered me & the Dean to stand guard
over Kurylo. We weren't able to handle
him, but he came downstairs & into
the square again. I would say he
was very drunk. Dean & I went
down after him & Mr. Forests put more
guards over him. The guards knocked
Kurylo back into the house. I didn't see
him after that.

Xerox -

Q I have known a accused since
the middle of December but never
saw him to carry on like this
before.

Defence.

Just Witness: Evidence on acts of crime by accused

On July 14/45 in the afternoon we
were in a reserve area. Everyone was
glad to be out of the slit trenches. Some
of us decided to get some wine &
we started drinking. I had a couple

9
4. Then a few more. We had a piano
& we were singing & dancing. The next
thing I know I fell down on the floor.
I woke up in the Guard house next
morning & didn't know what had
happened. This was the first time I had
had any quantity of wine; I had had
a glass or two before. In civilian life
I worked below ground in gassy atmospheres
and my head was affected, I suppose.
I usually don't drink much.

X enani.

It's 18 months since I left the
mines. I worked there 3 1/2 years. Once
or twice a week I sometimes passed
out from the gas. I was never
treated for this. I was given pills.
On Jan 14 I think I had 8 to 10 small
glasses. It was some kind of white &
red wine in a big jug. I don't know
what happened to the jug. I don't
remember Lt. Forster coming into the
room. I remember in the Guard room
I woke up with a big head. I don't
drink much. A bottle of beer is
plenty for me. I usually trade my
money when for a chocolate bar.

(10)

Defending Officer's Address

It has been clearly shown that accused was drunk. He absconded from his friend & a witness to have been very drunk. This was near the point & Mr. Justice on his part, should have placed him under arrest immediately if only to protect the accused himself. This would have prevented everything that occurred. I ask the Court to treat this as ~~a series of offences~~ one offence of drunkenness rather than a series of offences.

Prosecution's Address.

The evidence is not disputed by the Defence. The Defence says accused should have incurred because he was drunk. Quote MML C7 p 9 ff 106. This man's mind was affected by drink, but he was capable of forming one intent after another. He intended to strike his superior officer when threatened. He was capable of intending to disclose his superior officer, which he did repeatedly. He intended to strike an man with a knife. He was not mentally or morally innocent

(10)

because he was fairly drunk. Note
that this period of alleged blankness
took place over a period of about 2
hours.

AW

12
Defending Officer informs the Court that
he intended to call S/Sgt. Kitching
K.D., D. Coy, The Irish Regiment of
Canada as a character witness. This
NCO. has been taken away on duty
from the unit and is not available
as a witness. This NCO. has known
the accused as a member of his platoon
for the last 5 months.

The M.O. who treated the accused
at the R.A.P. (Capt. Spafford, R.C.A.M.C.)
has since been killed in action.

Address in Mitigation

This all occurred as a result of
accused's drinking. This is accused's
first case of drunkenness. All his
offences have been in Canada
& mostly of minor importance,
except the case of insubordinate
language. This occurred because
accused was told that this might
be a means of getting overseas, at
which he had not up to then
been successful. Since his arrival
with the Regiment 5 months ago he
has been in every action &

(p. 3)

John

has done well. He came to Canada
5 years before the war & worked in
a mine. He joined the Army & as
I say has been an excellent soldier.
This is his first home overseas.

SUMMARY OF EVIDENCE

IN THE CASE OF

B115211 PRIVATE STEPHEN KURYLO, THE IRISH REGIMENT OF CANADA, A SOLDIER OF THE CANADIAN ARMY PLACED ON ACTIVE SERVICE.

CHARGES:

- (1) WHEN ON ACTIVE SERVICE; STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE.
- (2) WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE - CREATING A DISTURBANCE IN THE FRONT LINE.
- (3) WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER.
- (4) WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE - STABBING A MEMBER OF HIS COY WITH A KNIFE.

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS: LIEUT. J.E. FORRESTER, THE IRISH REGIMENT OF CANADA HAVING BEEN DULY SWORN, STATES:
 "I AM LIEUT. J.E. FORRESTER "D" COY THE IRISH REGIMENT OF CANADA; I COMMAND 16 PLATOON OF WHICH PTE KURYLO IS A MEMBER; ON THE DAY OF 14 JAN 45 AT 1600 HRS THE PLATOON WAS MOVING TO A NEW LOCATION AND I CAME UPON PTE KURYLO AND SEVERAL OTHERS WHO HAD BEEN DRINKING. I WARNED THEM THAT THEY WERE TO HAVE NO MORE TO DRINK XX THAT EVENING BECAUSE IN CASE OF AN ATTACK I WANTED THEM WITH CLEAR SENSES. THEY ALL SEEMED TO AGREE AND WE STARTED TO CARRY OUR EQUIPMENT INTO THE HOUSE. AS WE DID PTE KURYLO STARTED TO URINATE OUT OF AN UPSTAIRS WINDOW OVER THE DOORWAY THROUGH WHICH WE WERE GOING; I WENT UPSTAIRS AND ORDERED PTE KURYLO DOWNSTAIRS TO HIS ROOM TO GET SOME REST; HE REFUSED TO GO AND SAID "NOBODY WAS GOING TO TELL HIM WHAT TO DO". I ARGUED WITH HIM AND TOLD HIM IF HE PERSISTED I WOULD HAVE TO PUT HIM UNDER ARREST; FINALLY I CALLED PTE ST PIERRE AND PTE DEANE AND TOLD THEM TO KEEP HIM IN A ROOM UPSTAIRS; I WENT DOWN AND SOON PTE KURYLO APPEARED DOWNSTAIRS AND ATTEMPTED TO LEAVE THE HOUSE, PTES ST PIERRE AND DEANE SAID THEY WERE UNABLE TO HANDLE HIM AS HE FORCED HIS WAY OUT, I STOPPED HIM IN THE YARD AND TOLD HIM TO GET BACK IN THE HOUSE AS I WAS PLACING HIM UNDER CLOSE ARREST NOW. HE REFUSED AND ATTEMPTED TO GET PAST ME CALLING ME MANY VILE NAMES AND STRIKING ME ON THE CHEST. PTE YOUNG CAME ALONG AND I ORDERED HIM TO HELP DEANE AND ST PIERRE TAKE KURYLO BACK INSIDE. HE STRUCK PTE YOUNG AND A SCUFFLE ENSUED. WITH THE HELP OF SGT WILKINS AND PTE CAMPBELL AND PTE GRAVELLE WHO I NOW PUT IN CHARGE OF KURYLO WE GOT HIM BACK INSIDE, WHERE HE RAN UPSTAIRS AND STARTED THROWING BOTTLES OUT OF THE UPSTAIRS WINDOW INTO THE COURTYARD; I WENT TO INFORM MAJOR HICKLING THE COY C.O. OF WHAT HAD TAKEN PLACE AND WHEN I RETURNED I WAS INFORMED THAT DURING MY ABSENCE PTE KURYLO HAD SLASHED PTE YOUNG WITH A KNIFE AND KICKED HIM IN THE STOMACH WHEN PTE YOUNG'S BACK WAS TURNED. I SENT PTE YOUNG TO THE R.A.P. FOR TREATMENT AND PHONED MAJOR HICKLING THAT KURYLO APPEARED SLIGHTLY INSANE TO ME AND WE WOULD HAVE TO DO SOMETHING DRASTIC WITH HIM; HE ORDERED ME TO TIE HIS HANDS AND FEET AND GET A PROVOST AND TAKE HIM TO THE R.A.P. HE DID THIS AND FROM THERE, WE SENT HIM TO THE REGIMENTAL GUARDROOM UNDER

escort in Ravenna. During all this period he cursed and swore what he would do to us when he was free.

Q.1. Were you under enemy fire in this area?

A.1. Not at the time but we had been mortared the night before when 2 men had been wounded

The accused declines to cross-examine the witness.

SECOND WITNESS:

B51958 Sgt. Wilkins A.T. The Irish Regiment of Canada having been duly sworn, states:
"I am B51958 Sgt Wilkins A.T. "D" Coy The Irish Regiment of Canada. On 14 Jan 46 at approx 1600 hrs I saw Pte S. Kurylo in a very intoxicated condition and feel that he was not responsible for his actions at the time. He was arguing with his Platoon Officer, Mr. Forrester when I saw him. As Platoon Sgt of 13 Platoon of which the accused was a member, I was given orders by Mr. Forrester to escort the accused to the Provost at Ravenna which I did at approx. 1930 hrs. He was still drunk."

A.T. Wilkins

Q.1. Where was the Coy situated when all this took place?

A.1. We were at the bend of the Lamone East of Mezzano.

Q.2. Were you under enemy fire?

A.2. Yes under shellfire.

The accused declines to cross-examine the witness.

THIRD WITNESS:

B43210 Pte Campbell V.L. The Irish Regiment of Canada having been duly sworn, states:
"I am B43210 Pte Campbell V.L. formerly of "D" Coy The Irish Regiment of Canada. On 14 Jan 46 at 1600 hrs I was put on as a guard over Pte Kurylo who was drunk, by Mr. Forrester. Pte Young came in the room and a fight started between Young & Kurylo. Sgt Wilkins came in and an argument started between him and the accused. Mr. Forrester then ordered the accused to be tied up. This was done and later he was handed over to the Provost."

Cross-examined by the accused.

V.L. Campbell

Q.1. Was Pte Young placed in charge of me?

A.1. I don't know.

There were no further questions.

FOURTH WITNESS:

P36723 Pte Young L.W. The Irish Regiment of Canada having been duly sworn, states:
"I am P36723 Pte Young L.W. "D" Coy 16 Platoon The Irish Regiment of Canada. On 14 Jan 46 at approx 1600 hrs Pte Kurylo was drunk and was causing a disturbance

with his Officer Mr. Forrester. Mr. Forrester told me to help Pte St Pierre and Pte Deane to take Kurylo into the house. There was an argument while we were going into the house and then the accused struck me on the face with his fist. After we got in the house I went into the room and the accused started to fight with me and he struck me above the eye with a knife. I left the room.

[Handwritten signature]

Q.1. When the accused slashed you were you his escort?

A.1. No Sir.

Cross-examined by the accused.

Q.1. Was the wound caused by a knife?

A.1. Yes the wound was caused by a knife.

There were no further questions.

FIFTH WITNESS:

AL09083 Pte St Pierre HD "D" Coy, 16 Platoon, The Irish Regiment of Canada duly sworn, states:
"I am AL09083 Pte St Pierre H.J. "D" Coy, 16 Platoon The Irish Regiment of Canada. On 14 Jan 45 at approx 1600 hrs I was ordered by Mr. Forrester, my Platoon Officer to stand guard over Pte Kurylo who was very drunk and appeared slightly out of his head and we were unable to handle him. He broke away and went downstairs into the square and Mr. Forrester put more guards on him, Pte Young being one, and we brought him into the house and there Mr. Forrester placed ~~more~~ new guards over him."

The accused declines to cross-examine the witness.

The accused was questioned as follows:

Do you wish to make any statement or give evidence upon oath? you are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

The accused states: as follows:

On 14 Jan 45 we were in a reserve area having come there the day before from the front line. We were very happy over being relieved from wet slit trenches and after dinner our section decided to get some wine and enjoy ourselves. We did some drinking and then I can't remember what happened. The next morning I woke up in the guard-house and couldn't figure out how I got there.

S. Kurylo.
I certify that rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

Taken down by me in the presence of the accused, in the field this 27th day of January 1945.

S. E. Charrette Capt.
(S. E. Charrette) Capt.
The Irish Regiment of Canada

No. _____ Name _____
 Date of last entry in _____
 Company Contact Sheet _____
 Sqn, Battery, _____ or Company _____
 Corps _____
 Period not reckoning _____
 Freedom from extra _____
 N/A Sheet No ONE _____
 Signature of _____
 Company, etc _____
 Date of _____ 19 AUG 43
 Badges _____
 Borrower or _____
 Proficiency Pay _____
 MFH 6
 APR 121
 (M/F 50/10/100/1000)

Place	Date of offence	Rank	Name of drinker	Remarks
FIELD	24 MAR 44	3	WA444 PTE	FIRST SHEET DESTROYED 24 MAR 44 AA SGT 40 CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DIS- CIPLINE (FAILED TO ARISE AT REVEILLE)
DEBERT H.S.	14 DYS PAV	3	WA444 PTE	AA B(2) USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER CPL ROY S O CPL ARKEY AA 46
DEBERT H.S.	7 DYS C.B.	3	WA444 PTE	AA B(2) USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER CPL ROY S O CPL ARKEY AA 46
DEBERT H.S.	14 DYS PAV	3	WA444 PTE	AA B(2) USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER CPL ROY S O CPL ARKEY AA 46

Substitute For MFB 296
or MFB 355

STATEMENT OF CHARACTER - PARTICULARS OF SERVICE OF ACCUSED

No B115211 Rank PTE Name KURYLO S
Age 25 Married or Single SINGLE No of Dependents
Date of Attestation 10 AUG 43
Number of days in close arrest awaiting trial 75
Civil 16 Military 16 Hospital Total 75
Dates of appointments, Promotions, etc, (if any) N/A

Decorations..... N/A

In the Field

10 FEB 45
(Date)

Edmund H. ...
St. Mary's ...
(C.O. HURDAGE CAPTAIN AND ADJUTANT
(Officer IC Regtl Books)
THE IRISH REGIMENT OF CANADA

Note:- Certified true copy of MFM 6 must accompany this form

The following is the correct form of medical certificate to be used for trial. The accused must be examined the morning of each day he is on trial and a certificate obtained on each such day.

" I certify that I have this morning examined No
Rank Name
and in my opinion he is fit/unfit to undergo trial by court-martial.
Station
Date:

(Medical Officer)

(MR (Can) 577)

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No (1)
 (1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address. (1)
 (1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken. (1)
 (1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed. (1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st charge(s). (2) The Court is closed, and considers the submission. (3) The Court is not satisfied, and the President announces that the submission is disallowed on the 1st charge(s), and allowed on the other charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s). (4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused accepted on all charges, see second alternative in para D6.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence. (1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination. (2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination. (3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony. (4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans No self or oath

Do you intend to call witnesses on your behalf? Ans No

Are they witnesses as to character only? Ans No
 (1. RP 155. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fn 2/9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed. (1)
 (1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s). (1) The finding(s) of the Court is (are) recorded in Part I of the Schedule. (2) The Court is re-opened.
 (1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st charge(s), being subject to confirmation, will be promulgated later. (1)
 Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed. (2)
 (1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? (1)
 Ans See record evidence page 12

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service (1), and certified true copy (copies) of Conduct Sheet(s) (2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B, respectively. (3)
 (1. MFB 255 or AFB 296. 2. MFM b. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? (1) Ans YES
 (1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated. (2)
 (1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence. (1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any. (2)

(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: *B 115211 Pte Stephen Turyko*

Charge.	Plea.	Finding.	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
(Insert "alternative" where applicable.)	(See Instrs p 2.)	(See note below.)	
1st <i>Art Sec 8(1)</i>	<i>Not Guilty</i>	<i>Guilty</i>	
2nd <i>Art Sec 40</i>	<i>Not Guilty</i>	<i>Guilty</i>	
3rd <i>Art Sec 9(r)</i>	<i>Not Guilty</i>	<i>Guilty</i>	
4th <i>Art Sec 40</i>	<i>Not Guilty</i>	<i>Guilty</i>	
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44.)

MINUTE OF PROMULGATION.

... served, or aside, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.
 ... awaiting present trial—a total of *16* days, of which *9* days were spent in hospital. (1)
 ... See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo four (4) years penal servitude with hard labour.

(Sgd) *10 Feb 45* (Sgd) *Walter Meigs*
 Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
 (See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Reserve the finding and sentence for confirmation

Date *10 Feb 45* (Sgd) *A B D Munnica* Commanding 11 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings but I vary the sentence so that it shall be as follows: "to suffer penal servitude for a term of four years" and I confirm the sentence as so varied.

I direct that the accused be not committed to prison or detention barracks until further orders. (1. AA 57A. Delete if not used.)

(Sgd) *Robert E. ...*

SENIOR JUDGE-ADVOCATE

Date

Commanding

20 MAR 1945

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.

Date.

Signature of Offr.

No illegals or irregularities such as would warrant withholding confirmation.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FGCM 10 Feb 45

B-115211 Pte KURYLO S.

Irish Regt of C

CHARGES: (1) AA Sec 8(1) (2) AA Sec 40
(3) AA Sec 9(2) (4) AA Sec 40

FINDINGS: Guilty Guilty
Guilty Guilty

SENTENCE: To undergo four (4) years penal servitude with hard labour.

CONFIRMATION: "I confirm the finding but I vary the sentence so that it shall be as follows: 'To suffer penal servitude for a term of four years' and I confirm the sentence as so varied".

(Sgd) "E.G. Weeks" Maj-Gen
i/c Administration
Canadian Military Headquarters
Confirming Officer

Date 28 Mar 45.

PROMULGATED AND EXTRACTS TAKEN

In the Field, Belgium
(Country)

E.G. Weeks.....Signature.

.. Lt. Col.....Rank

Commanding Officer.....Appointment

. 1. May. 45.....
Date.

1 Cdn Disciplinary Centre.....Unit

5 X-132 Pto Kashmirak, M.Y.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-106758 Pte KUSHNIRAK, M.J. - 1 Cdn Adm Tpt Coy

Charge.	Plea.	Finding.	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
(Insert "alternative" where applicable.)	(See Instrs p 2.)	(See note below.)	
1st AA Sec 15(1)	GUilty	GUilty	
2nd AA Sec 40	GUilty	GUilty	
3rd AA Sec 40	GUilty	GUilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for _____ beginning on (date) _____
 (1. Insert sentence being served, or delete; if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)
 Time in confinement awaiting present trial—a total of 9 days, of which N/A days were spent in hospital. (2)
 (1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for twenty-eight (28) days.

(Sgd) _____ 7 JAN 46 _____ (Sgd) _____
 Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
 (See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I declare that the accused is not deemed to be sane or sane at the time of the offence(s) (Delete if not applicable)

Date 8 Jan 46 (Sgd) A.B. Connelly
 Commanding (A.B. Connelly) Brig
Comd "B" Gp
 Cdn Repat Unit Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. M106758 Pte Kushnirak M.J. Date. 10 Jan 46 Signature of Offr. J.A.M. Kay

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPAS6 (in lieu of AFAS1) 40 P & B 1650 (11.44) 4/38B

Convened by Order of BRIG A.B. CONNELLY CBE Comd "B" GP CRU dated 5 Jan 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/R or A/appmt, if any, see AA 182, 183, fn 1, KR Can 308, 328, 330.)

Number. (a) Prmt R. (b) Appmt, A/R or A/Appmt. Full Christian Names. Surname. Unit.
 M-106758 Pte Mike Jack KUSHNIRAK 1 Cdn Adm Tpt Coy

22 Jan 46 by Brody Maj

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date) 7 Jan 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, writing Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fn 10s. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for aiths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (6) attached thereto. (1) The Court is satisfied that it is properly convened and constituted (2), accused is (are) amenable to military law, and each charge discloses an offence. (2)
 (1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10:00 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. (1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO. (2)
 (1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to _____ as interpreter? Ans _____

The interpreter is sworn. (1) Do you object to M. E. B. BIRSE as shorthand writer? Ans Yes. The shorthand writer is sworn. (1)
 (1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused. (1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No. (1)
 (1. RP 110. 2. If no objection, writing member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn. (1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	C. E. WOODROW CBE, ED	HQ CRU
Member	Captain	F. M. BURTT	2 Cdn Repat Dep
Member	Captain	R. P. BIRSE	3 Cdn Repat Dep
Judge-Advocate			
Prosecutor	Lt Col	F. A. M. KAY	1. Cdn Repat Dep
Defending Offr	Lt Col	E. S. GLEADWIN	1. Cdn Repat Dep

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Yes. (1)
 (1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
 (2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused _____ before arraignment make(s) (no) (a) plea _____ (1)
 (1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding or i recorded per Notes. For forms of record see references in fn 1 to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet. (1) The accused does (do) not object to any charge. (2) There is no amendment to be made to the Charge Sheet. (3) The President records the pleas in Part I of the Schedule.
 (1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be dealt see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii), to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc. see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)⁽¹⁾, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.⁽²⁾

(1. RP 35 fn 2. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)⁽¹⁾. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty⁽²⁾, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined⁽³⁾, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.⁽⁴⁾

President to accused: Do you wish to make a statement? Ans. NO - 51K ⁽¹⁾
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement⁽¹⁾—The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.⁽¹⁾

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex 17, initialled and read aloud by the President.⁽¹⁾

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras 51 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.⁽¹⁾

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.⁽¹⁾

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. _____ ⁽¹⁾
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.⁽¹⁾

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.⁽¹⁾

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.⁽¹⁾ The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the _____ charge(s).⁽²⁾ The Court is closed, and considers the submission.⁽³⁾ The Court is re-opened, and the President announces that the submission is disallowed on the _____ charge(s), and allowed on the _____ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).⁽⁴⁾

(1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.⁽¹⁾ You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.⁽²⁾ You may, however, make a statement without being sworn, and you will not be subject to cross-examination.⁽³⁾ But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.⁽⁴⁾ You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. _____ Do you intend to call witnesses on your behalf? Ans. _____

Are they witnesses as to character only? Ans. _____
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.⁽¹⁾

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).⁽¹⁾ The finding(s) of the Court is (are) recorded in Part I of the Schedule.⁽²⁾ The Court is re-opened.

(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the _____ charge(s), being subject to confirmation, will be promulgated later.⁽¹⁾ Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.⁽²⁾

(1. AA 54(3) (e), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? ⁽¹⁾
Ans. NO - 51K

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service⁽¹⁾, and certified true copy (copies) of Conduct Sheet(s)⁽²⁾, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.⁽³⁾

(1. MFB 355 or AFB 296. 2. MUM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? ⁽¹⁾ Ans. Resigning officer plea in mitigation (attached)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.⁽¹⁾

(1. AA 54(e), RP 120(A).)

E5. The Court considers the sentence.⁽¹⁾ The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.⁽²⁾

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provision, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 99, 118, 119(A), KR Can 308, 320, 563-566, Overseas RO 309, 7223, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 58(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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CHARGE SHEET

THE ACCUSED, M-106758 Pte KUSHNIRAK, Mike Jack,
No 1 Cdn. Adm. Tpt. Coy. RCASC a soldier of the
Canadian Army Overseas is charged with:

FIRST CHARGE
Sec 15(1) AA

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF
WITHOUT LEAVE

in that he

At Lille Barracks, Farnborough, absented himself
without leave from 1630 hours 20 Dec 45 until
2100 hours 20 Dec 45.
(Total time absent - 4 hrs., 30 minutes.)

SECOND CHARGE
Sec 40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE
PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

At approx 2100 hrs 20 Dec 45 was carrying a ci-
vilian in a W.D. Vehicle without proper author-
ization.

THIRD CHARGE
Sec 40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE
PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

At approx 2100 hrs 20 Dec 45 was found in Redhill
Surrey with W.D. Vehicle CL 4275667 without proper
authority.

Farnborough, Hants.
2 Jan 46

G.F. Stevenson
(G.F. Stevenson) Lt. Col.
Commanding Officer,
No 1 Cdn. Adm. Tpt. Coy.,
R.C.A.S.C. C.A.(C)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
5 Jan 46

A.E. Connelly
(A.E. Connelly) Brig
Comd "B" Gp
Cdn Repat Units

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his command or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate command of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There shall be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 52, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 107. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/R or A/Appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt B. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
M-106758	Pte	Mike Jack	KUSHNIRAK	1 Cdn Adm Tpt Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Jan 46 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate ~~thorout the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-Col	G. E. WOODROW OBE, ED	HQ CRU
(Rank)	(Must be named. RP 106.)	(Unit)

MEMBERS.

Captain	to be detailed by CO	2 Cdn Repat Dep
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Captain	to be detailed by CO	3 Cdn Repat Dep
(Rank)	(Named or detailed. RP 106.)	(Unit)

WAITING MEMBER.

(Rank)	(Named or detailed, if any. RP 106.)	(Unit)
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JUDGE ADVOCATE.

(Rank)	(Must be named, if any. RP 106.)	(Unit)
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On Active Service in the Fd

in ENGLAND	A. E. CONNELLY	BRIG
(Country)	(Signed personally. RP 105 fn 2)	(Rank)

Dat: 5 Jan 46	Commanding "B" GP, CDN REPAT UNITS Convening Officer.
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CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

NO. 1. CDN. ADMINISTRATIVE TRANSPORT COMPANY R.C.A.S.C. C.A.(O).

Medical Officer's Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No. M-106578 Pte Kushnirak, M. J.
1 Cdn Adm Tpt Coy, (rank) (name)
of R.C.A.S.C. and in my opinion he is fit to undergo
~~UNIT-~~
trial by Court Martial.

Station Fernborough, Hants.

Date 7 Jan. 46

Sgd.

J. B. Newton (Capt.)
(Medical Officer)

Exhibit "A"
CLD

SUMMARY OF EVIDENCE

In the case of

M-106758 Pte Kushnirak, M.J., No 1 Cdn. Adm. Tpt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas:

CHARGES

1. Sec 15(1) A.A. WOAS Absent without leave 4 hrs 30 mins.
2. Sec 40 A.A. WOAS Conduct to the prejudice of good order, etc. carrying a civilian without proper authorization.
3. Sec 40 A.A. WOAS Conduct to the prejudice of good order, etc. in possession of W.D. veh without proper authorization.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS

B-58094 Sgt Srigley, E.A., H.Q. C.R.U. a soldier of the Canadian Army Overseas, having been duly sworn states:

On 20 Dec 1945 at 0830 hrs I was picked up by M-106758 Pte Kushnirak, M.J. driving veh CL 4273367 at the Sgts' Mess H.Q. C.R.U. From whence we proceeded to collect stores from various places in the Aldershot Area, and a farm at Farnham. On completion of the detail at 1600 hrs on 20 Dec 1945 I dismissed Pte Kushnirak.

The accused declined to cross examine the witness.

E. H. Srigley
.....

SECOND WITNESS

B-165395 L/Cpl Elliott, E., Leatherhead Det. 17 Cdn Provost Coy., a soldier of the Canadian Army Overseas, having been duly sworn states:

At about 2100 hrs 20 Dec 1945 whilst on patrol in the town of Redhill, Surrey, accompanied by L/Cpl Hennessey, G.R., I had occasion to check W.D. Veh. CL 4273367 driven by Pte Kushnirak, M.J. On checking the above mentioned veh, I found that the above mentioned soldier was on an unauthorized trip in that his work ticket was made out for Aldershot Area. Riding in the cab with the a/m soldier was a Mrs. C. Woodger, a civilian. He was not in possession of civilian release form 1073. I escorted the a/m soldier to the Redhill Civil Police Station where I phoned his unit's Orderly Officer, and from information received from A/M officer, I found that Pte Kushnirak was A.W.L. from his Unit, in that he failed to check in at 1700 hrs. I informed Pte Kushnirak of the offences and told him a report would be submitted to his orderly room. I ordered him to return to his Unit on instructions from the Orderly Officer.

The fact that the woman in the vehicle was a civilian named Mrs. C. Woodger, was established by Redhill Civil Police

Crossexamination of second witness by Pte Kushnirak.

Ques: Did you see me drive a civilian girl in my veh?

Ans: Yes I saw the civilian woman in your veh, from the stop lights in Redhill to the Canteen where you parked the veh. Work Ticket entered marked Exhibit "A".

...*E. Elliott*.....

THIRD WITNESS

F-33062 L/Cpl Hennessey, G.R., Leatherhead Det., 17 Cdn. Provost Coy., a soldier of the Canadian Army Overseas, having been duly sworn states:

At about 2100 hrs. 20 Dec 1945 I was accompanying L/Cpl Elliott on duty at Redhill, Surrey when he had occasion to check Pte Kushnirak driving veh GL 4273367. L/Cpl Elliott asked for the a/m soldier's work ticket and on examining it found that he was off his route. Riding in the veh with the a/m soldier was a civilian, Mrs. C. Woodger. L/Cpl Elliott asked Pte Kushnirak for his civilian release form which he could not produce. We then escorted Pte Kushnirak to the Civilian Police station at Redhill. L/Cpl Elliott then phoned the duty officer of 1 Cdn Adm Tpt Coy. RCASC, and the duty officer told him that Pte Kushnirak was A.W.L. and to report back to his unit.

Pte Kushnirak was then informed of his offences and that a report would be submitted to his orderly room.

The accused declined to cross examine the witness.

...*G. R. Hennessey*.....

THE ACCUSED WAS CAUTIONED AS FOLLOWS: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given as evidence."

EVIDENCE OF ACCUSED

M-106758 Pte Kushnirak, M.J., No 1 Cdn. Adm. Tpt. Coy. RCASC, a soldier of the Canadian Army Overseas having been duly sworn states:

When I completed my detail at approx 1600 hrs on 20 Dec 1945 I proceeded to Redhill to meet my friend Mrs. Woodger, and as I was entering the canteen with her I was stopped by L/Cpl Elliott of 17 Canadian Provost Coy., who demanded my work ticket and civilian release form 1073.

(3)

After examining my work ticket, he escorted me to the civilian police station and telephoned the duty officer of No 1 Cdn Adm Tpt Coy RCASC.

After which he instructed me on orders from the duty officer to return to my unit.

.....*H. H. H. H.*.....

I certify that the foregoing Summary of Evidence, consisting of 3 pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

F. L. Seymour Capt.
(F. L. Seymour) Capt.
Officer detailed to take
Summary of Evidence.

FARNBOROUGH, Hants.
2 Jan 46

P.G. 3518 (Revised 1942)
 P&S 400(1749)

TRANSPORT

CLASS **EKA**
 60 cent 158



MAKE OF VEHICLE **Ford**

DETAILS OF LOAD (3)

Brought forward from Work Ticket No. **91-17**

SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)

LUBRICATING OILS
 Type (8) Pints (9)

At Start (10) At End (11)

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	From (4)	To (5)	Via (6)	Signature (7)	Type (8)	Pints (9)	At Start (10)	At End (11)
18	A	store	Unit	London		[Signature]	A	24	24	19
18	B	CRU	Unit	Proposed		[Signature]	B	24	24	24
18	C	BRP	Unit	Aldershot		[Signature]	C	24	24	24
20	D	store	Unit	Aldershot		[Signature]	D	24	24	24
21	E	store	Unit	Southampton		[Signature]	E	24	24	24
21	F	BRP	Unit	Southampton		[Signature]	F	24	24	24
	G						G			
	H						H			
	I						I			
	J						J			
	K						K			
	L						L			
	M						M			

GRAND TOTALS
 POUNDS
 456 10

P.G. for week **7.2**

or totals carried over.

295

A.G. 3518 (Revised 1942)
 G.P.S. 400(3743)

TRANSPORT WORK TICKET

No. 81-61

MAKE OF VEHICLE
Ford

CLASS **ECA**
60 cent 158"



SECTION
E1

DRIVER'S NAME
Kushnirak M.J.

W.D. No.
CK 423367

MONTH & YEAR
8-2

DATE (1)	FOR WHICH JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	From (4)	ROUTE			SIGNATURE OF PERSON AUTHO- RIZING JOURNEY (7)	LUBRICA- TING OILS		FUEL GALLONS				TIME		SPEEDOMETER			
				To (5)	Via (6)	Type (8)		Pints (9)	At Start (10)	Drawn (11)	At End (12)	Used (13)	Out (14)	In (15)	In (16)	Run (17)	Day (18)		
				Brought forward from Work Ticket No. <i>81-17</i>															
<i>8-2</i>	<i>A</i>		<i>Unit</i>	<i>Di.D. CRU</i>	<i>London</i>		<i>[Signature]</i>												
<i>18</i>	<i>B</i>	<i>CRU</i>	<i>Stores</i>	<i>Unit</i>	<i>London</i>	<i>1st</i>	<i>[Signature]</i>			<i>24</i>	<i>17</i>	<i>24</i>	<i>2</i>	<i>1400</i>	<i>0400</i>	<i>130</i>	<i>97</i>	<i>840</i>	
<i>12</i>	<i>C</i>	<i>2 Rep</i>	<i>Pure</i>	<i>Unit</i>	<i>Widened</i>	<i>London</i>	<i>[Signature]</i>			<i>24</i>	<i>2</i>	<i>24</i>	<i>2</i>	<i>1400</i>	<i>0400</i>	<i>130</i>	<i>97</i>	<i>19</i>	
<i>20</i>	<i>D</i>	<i>2 Rep. C.H.</i>	<i>Stores</i>	<i>Unit</i>	<i>Aldershot</i>	<i>Widened</i>	<i>[Signature]</i>			<i>24</i>	<i>15</i>	<i>24</i>	<i>15</i>	<i>1400</i>	<i>0400</i>	<i>132</i>	<i>08</i>	<i>11</i>	
<i>21</i>	<i>E</i>	<i>Rep.</i>	<i>Pure</i>	<i>Unit</i>	<i>Aldershot</i>	<i>cone</i>	<i>[Signature]</i>			<i>24</i>	<i>2</i>	<i>24</i>	<i>2</i>	<i>1800</i>	<i>0400</i>	<i>193</i>	<i>36</i>	<i>10</i>	
<i>21</i>	<i>F</i>	<i>Rep</i>	<i>Pure</i>	<i>Unit</i>	<i>Southampton</i>	<i>cone</i>	<i>[Signature]</i>												<i>1100</i>
	<i>G</i>																		
	<i>H</i>																		
	<i>I</i>																		
	<i>J</i>																		
	<i>K</i>																		
	<i>L</i>																		
	<i>M</i>																		
	<i>N</i>																		

M.P.G. for week *7.2* or total carried over.

41 41 395

LIST OF WITNESSES FOR THE PROSECUTION

In the case of:

(Reg. No.) M-106758 Pte Kushnirak, Mike Jack

<u>Ref. No.</u>	<u>Name & Initials</u>	<u>Unit or Address.</u>
B-58094	Sgt Srigley, E.A.	HQ C.R.U.
B-165395	L/Cpl Elliott, E.	Leatherhead Det. 17 Cdn Pre Coy
F-33062	L/Cpl Hennessey, G.R.	" " " " " " "

FARNBOROUGH, Hants.
Date 3 Jan 46.

F.A. McKay
(F.A. McKay) Lieut.,
Assistant Adjutant,
1 Cdn Adm Tpt Coy,
R.C.A.B.C. C.A.(C).

APPLICATION FOR DEFENDING OFFICER

I, Reg. No. M-106758 Pte Kushnirak, Mike Jack
No 1 Cdn Adm Tpt Coy, RCASC desire to have an officer assigned to represent me at my forthcoming trial by Court-Martial.

I desire the services of _____ N/A _____
if he is available. UNIT: _____ N/A _____

M-106758 Pte M.J. Kushnirak
(Signature of Soldier.)

FARNBOROUGH, Hants.
Date 3 Jan 46.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
M-106758	Pte	KUSHNIRAK, M.J.	No 1 Cdn Adm Tpt Coy, RCASC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

NOTE—As a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

	* Within last 12 months.	* Since Enlistment.
For AWL Sec 15(1) A.A.	1 times	3 times
For Negligence Road Accident Sec 40 A.A.	1 times	1 times
For _____	_____ times	_____ times
For _____	_____ times	_____ times
For _____	_____ times	_____ times

† See para. 67, K.R., 1941.
* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.
INSTRUCTION.—(1) the charge is for drunkenness (2) 4 entries for drunkenness must be stated separately and dated.

Number of instances of gallantry or distinguished conduct.
—
These are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or ~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for _____ beginning on the day of _____~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 9 days in military custody, making a total of 9 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 25 YRS

6. The date of his ~~record of service~~ attestation specified in his attestation paper is 26 Feb. 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 33 MOS.

8. The accused is entitled to deferred pay or gratuity in respect of 33 MOS. service.

9. The accused is entitled to reckon 33 MOS. service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(or in possession of or entitled to (state any military decoration or award):~~ Defence Medal, OVS & CLASP

~~11. (If the accused was warrant officer) The accused before he was made a warrant officer has held the regimental rank of _____~~

~~12. (If the case of an officer) The accused holds in the army the rank of _____ dated _____ and in his regiment (or corps or department) the rank of _____ dated _____~~

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion

In the rank of _____ years,

In the rank of _____ years,

In the rank of _____ years,

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. E-106789 Rank Pte Name KUSIBIGAK, M. J. of 1 Cdn Adm Tpt Regiment (or as the case may be) (INSTRUCTION—A verbatim extract from the regimental books, stating these particulars, with trial, must be inserted)

Description of summary award or trial, stating the charge or dispensing with trial	Date and place of trial, or summary award under A. A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted
NIL				

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7 day of January 46
 (V. A. McKey) Lt., Regimental Officer
 No 1 Cdn Adm Tpt Coy., R.C.A.S.C.

No. M-106756

Name KUSHIRAK, M.J.

Sqn, Battery,
or Company

Corps R.C.A.S.C.

Date of
enlistment

26 Feb 43 GC

Badge

Signature OC

Company, etc

Service or
Proficiency Pay3/17 MFM 6
(AFM 122)
40/PAS/136 (7019)
CharacterDate of last entry in
Company Conduct Sheet

N/A

No. and date
of last drunk

N/A

Period not reckoning towards
fronion from extra fine

N/A

Sheet No. 1

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31 Dec 43	Pte		Old Sheet Destroyed 17 Sep 43 AA Sec 15(1) AWL from 1830 hrs 31 Dec 43 until 2130 hrs 1 Jan 44 TTA-1 day, 2 hrs	Sgt Pedersen Documentary	Forf 7 dys pay FR&I 149(2)	4 Jan 44		Forf 2 d.p. FR&I 149(1) a
Field	12 Jul 44	Pte		AA Sec 15(1) AWL from 2245 hrs 12 Jul 44 until 2330 hrs 12 Jul 44 (45 mins)	Lt G.E. Soversigh	Forf 3 dys pay FR&I 149(2)	15 Jul 44	Lt-Col H.T. Kamuton	
Field	2 Jun 45	Pte		AA Sec 15(1) AWL from 2359 hrs 2 Jun 45 until 1150 hrs 3 Jun 45 TTA-11 hrs 51 mins	Documentary	Forf 7 dys pay FR&I 149(2)	4 Jun 45	Lt-Col J.H. Ziegler	Forf 1 d.p. FR&I 149(1) a
Field	23 Oct	Pte		AA Sec 40 WOAS, Negligent to the pref. etc in that he, at 1500 hrs 23 Oct 45 did drive WD Veh CL-427-367 in such a manner as to cause an accident involving damage to said WD Veh to the	Documentary	Forf 5 dys pay FR&I 149(2) Stopp. of pay 21-11-3 FR&I 158(2)	29 Nov 45	Lt-Col G.F. Stevenson	

(pro)

Exhibit E2
C.E.D.
5 Jan 46

Mr. President, Members of the Court:

In my Plea of Mitigation, I desire to present the following extenuating circumstances which I feel had a definite bearing on the charges to which the accused, M-106758 Pte Kushnirik, M.J. has pleaded guilty. During 33 months service, Pte Kushnirik has shown himself to be mentally unstable. He has on three occasions been charged with being A.W.L. each of a minor nature. He has a Pulhems profile M-4& by his own admission does not consider himself capable as Driver IC. He is very nervous when driving and having had one accident, drives in constant fear of another. He states that once on the road, if he feels an urge to go anywhere he seems totally unable to overcome it as was the case in this instance. In conclusion, Gentlemen, may I ask that you bear these facts in mind in dealing with this case.

E.S. Gladwin
(E.S. Gladwin) Lieut.

SUMMARY OF EVIDENCE

In the case of

M-106758 Pte Kushnirak, M.J., No 1 Cdn. Adm. Tpt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas:

CHARGES

1. Sec 15(1) A.A. WOAS Absent without leave
4 hrs 30 mins.
2. Sec 40 A.A. WOAS Conduct to the prejudice
of good order, etc. carrying
a civilian without proper
authorization.
3. Sec 40 A.A. WOAS Conduct to the prejudice
of good order, etc. in possess-
ion of W.D. veh without proper
authorization.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS

B-58094 Sgt Srigley, E.A., H.Q. C.R.U. a soldier of the Canadian Army Overseas, having been duly sworn states:

On 20 Dec 1945 at 0830 hrs I was picked up by M-106758 Pte Kushnirak, M.J. driving veh CL 4273367 at the Sgts' Mess H.Q. C.R.U. From whence we proceeded to collect stores from various places in the Aldershot Area, and a farm at Parham. On completion of the detail at 1600 hrs on 20 Dec 1945 I dismissed Pte Kushnirak.

The accused declined to cross examine the witness.

E.H. Srigley.....

SECOND WITNESS

B-165395 L/Cpl Elliott, E., Leatherhead Det. 17 Cdn Provost Coy., a soldier of the Canadian Army Overseas, having been duly sworn states:

At about 2100 hrs 20 Dec 1945 whilst on patrol in the town of Redhill, Surrey, accompanied by L/Cpl Hennessy, G.R., I had occasion to check W.D. Veh. CL 4273367 driven by Pte Kushnirak, M.J. On checking the above mentioned veh, I found that the above mentioned soldier was on an unauthorized trip in that his work ticket was made out for Aldershot Area. Riding in the cab with the a/m soldier was a Mrs. C. Woodger, a civilian. He was not in possession of civilian release form 1075. I escorted the a/m soldier to the Redhill Civil Police Station where I phoned his unit's Orderly Officer, and from information received from a/m officer, I found that Pte Kushnirak was A.W.L. from his Unit, in that he failed to check in at 1700 hrs. I informed Pte Kushnirak of the offences and told him a report would be submitted to his orderly room. I ordered him to return to his Unit on instructions from the Orderly Officer.

The fact that the woman in the vehicle was a civilian named Mrs. C. Woodger, was established by Redhill Civil Police

Cross-examination of second witness by Pte Kushnirak.

Ques: Did you see me drive a civilian girl in my veh?

Ans: Yes I saw the civilian woman in your veh, from the stop lights in Redhill to the Canteen where you parked the veh.
Work Ticket entered marked Exhibit "A".

B. Elliott
.....

THIRD WITNESS

F-33062 L/Cpl Hennessey, G.R., Leatherhead Det., 17 Cdn. Provost Coy., a soldier of the Canadian Army Overseas, having been duly sworn states:

At about 2100 hrs. 20 Dec 1945 I was accompanying L/Cpl Elliott on duty at Redhill, Surrey when he had occasion to check Pte Kushnirak driving veh CL 4273367. L/Cpl Elliott asked for the a/m soldier's work ticket and on examining it found that he was off his route. Riding in the veh with the a/m soldier was a civilian, Mrs. C. Woodger. L/Cpl Elliott asked Pte Kushnirak for his civilian release form which he could not produce. We then escorted Pte Kushnirak to the Civilian Police station at Redhill. L/Cpl Elliott then phoned the duty officer of 1 Cdn Adm Tpt Coy. RCASC, and the duty officer told him that Pte Kushnirak was A.W.L. and to report back to his unit.

Pte Kushnirak was then informed of his offences and that a report would be submitted to his orderly room.

The accused declined to cross examine the witness.

H. R. Hennessey
.....

THE ACCUSED WAS CAUTIONED AS FOLLOWS: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given as evidence."

EVIDENCE OF ACCUSED

M-106758 Pte Kushnirak, M.J., No 1 Cdn. Adm. Tpt. Coy. RCASC, a soldier of the Canadian Army Overseas having been duly sworn states:

When I completed my detail at approx 1630 hrs on 20 Dec 1945 I proceeded to Redhill to meet my friend Mrs. Woodger, and as I was entering the canteen with her I was stopped by L/Cpl Elliott of 17 Canadian Provost Coy., who demanded my work ticket and civilian release form 1073.

(3)

After examining my work ticket, he escorted me to the civilian police station and telephoned the duty officer of No 1 Cdn Adm Tpt Coy RCASC.

After which he instructed me on orders from the duty officer to return to my unit.

Mc. J. Youb........

I certify that the foregoing Summary of Evidence, consisting of 3 pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

F.B. Seymour Capt

(F.B. Seymour) Capt.
Officer detailed to take
Summary of Evidence.

FARNBOROUGH, Hants.
2 Jan 46

4R-108

Pte. Kwasnicki J. A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A117034 Pte Kwasmeki, J A RPLI

Charge.	Plea.	Finding.	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
(Insert "alternative" where applicable.)	(See Instrs p 2.)	(See note below.)	
1st	Not Guilty	Not Guilty	
2nd	Guilty	Guilty	
3rd	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 54, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

Present under sentence for _____ beginning on (date) _____ (1)
 (1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B293.)
 Time in confinement awaiting present trial—a total of 18 days, of which 0 days were spent in hospital. (*)
 (1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)
 Sentence Awarded by the Court: four days detention for max (6) months

(Sgd) End Hillman 18 Jan 45 (Sgd) Robert Major
 Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
 (See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:
Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders. (*)
 (1. AA 57A. Delete if not used.)
 Date 25 Jan 45 (Sgd) J E C Pangman
 Commanding Major Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. RHLI Date. 25 Jan 1945 Signature of Offr. J E C Pangman
A117034 Pte Kwasmeki, J A

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL-COURT-MARTIAL

Convened by Order of LT-COL J E C PANGMAN / Comd 4 CDN INF BDE dated 18 Jan 45
 ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/R or A/ Apptmt, if any, see AA 182, 183, fn. KR Can 308, 328, 330.)
 Number. (a) Prmt R. (b) Apptmt, A/R or A/ Apptmt. Full Christian Names. JULIAN ALEXANDER KWASMEKI RHLI
 A-117034 PTE
 PROCEEDINGS REVIEWED
 FEB 23 1945
 REPRESENTING OFFICER, JAG HOLLAND
 Held in the Pt in (country) HOLLAND on (date(s)) 18 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 20/105.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.
 (PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALIZED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fn. Rls. For guidance on procedure when a variation in the form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95. For oaths and instrs on how to record addresses evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 53-70, 73, 74, 94, 103, 119, 132.)
 A2. The President initials and lays before the Court the Convening Order and Charge Sheet attached thereto. (1) The Court is satisfied that it is properly convened and constituted (2), accused is (are) amenable to military law, and each charge discloses an offence. (3)
 (1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.
 A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. (1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO. (4)
 (1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)
 A5. President to accused: Do you object to _____ as interpreter? Ans. no
 The Interpreter is sworn. (1) Do you object to D 36570 5/191 Pndro RV as shorthand writer? Ans. no
 The shorthand writer is sworn. (1)
 (1. RP 72. Delete, if none employed.)
 A6. The Convening Order and names of the President and Members of the Court are read to the accused. (1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans. no
 (1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 15, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn. (1) The following are the ranks, names and units of the offrs comprising the Court, etc:
 President Major D. S. Reilly RPLI
 Member Cmptr W H Austin RPLI
 Member Cmptr A D Hodges Essex Regt
 Judge-Advocate Cmptr E M M Armstrong Hq 4th AF Bde
 Prosecutor LT. B E Easton RPLI
 Defending Offr Cmptr E G Smith RPLI

Questions by President: Is the Prosecutor a lawyer? Ans. no Is the Defending Offr a lawyer? Ans. no
 (1. RP 28, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
 (2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused A117034 Pte Kwasmeki, J A before arraignment make(s) (no) (a) plea(s).
 (1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fn 1 to RP cited. Insert in 48 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet. (1) The accused does (does not) object to any charge. (2) There is no amendment to be made to the Charge Sheet. (3) The President records the pleas in Part I of the Schedule.
 (1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 33. If alternate, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form _____
 PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

V L T Folz

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)⁽¹⁾, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.⁽²⁾
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).⁽¹⁾ If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty⁽²⁾, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined⁽³⁾, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.⁽⁴⁾

President to accused: Do you wish to make a statement? Ans. No
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.⁽¹⁾ The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charges. The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charges. Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.⁽¹⁾
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.⁽¹⁾
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.⁽¹⁾
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.⁽¹⁾
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.⁽¹⁾ Still
(1. RP 39(B), 60(A) (B), 90, 91(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.⁽¹⁾
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.⁽¹⁾ Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s). The Court is closed, and considers the submission.⁽²⁾ The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and that accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the ~~other~~ charge(s).
(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.⁽¹⁾ You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.⁽²⁾ You may, however, make a statement without being sworn, and you will not be subject to cross-examination.⁽³⁾ But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.⁽⁴⁾ You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. On oath. Do you intend to call witnesses on your behalf? Ans. No. Are they witnesses as to character only? Ans. No
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.⁽¹⁾
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 995. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).⁽¹⁾ The finding(s) of the Court is (are) recorded in Part I of the Schedule.⁽²⁾ The Court is re-opened.
(1. RP 43, 117(A). 2. Notes in Part I of Schedule. 3. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charges, being subject to confirmation, will be promulgated later.⁽¹⁾ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.⁽²⁾
(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? Ans. No
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service⁽¹⁾, and certified true copy (copies) of Conduct Sheet(s)⁽²⁾, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(j) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. Y and Ex. Z respectively.⁽³⁾
(1. MFB 355 or APB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? Ans. I have nothing to say.
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.⁽¹⁾
(1. AA 54(e), RP 120(A).)

E5. The Court considers the sentence.⁽¹⁾ The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.⁽²⁾
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty, RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 306, 330, 363-366, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 66(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused All7034 Pte Julian Alexander KWASNICKI, 1 Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Section 40
ARMY ACT

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the field, on the night of 29/30 Nov 44, was improperly in possession of WD veh number CZ 4255418, the property of the Government of Canada.

SECOND CHARGE
Section 9(2)
ARMY ACT

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he,

in the field, at approx 0900 hrs 31 Dec 44, when ordered to report to the kitchen immediately by Sgt PETERS, EM, he refused by saying "No, I am going to wash first". He did not report to the kitchen.

THIRD CHARGE
Section 8(2)
ARMY ACT

WHEN ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,

in that he,

in the field, at approx 0900 hrs 31 Dec 44, did say to his pl sgt, M50766 Sgt PETERS, EM, "Do you know what I think, you are a cunt", or words to that effect.

In the field
5 Jan 45

W.D. Whitaker
(WD WHITAKER) Lt-col,
Comd 2 Bn RHLI, CA(Os)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
18 Jan 45

J.P. Argman CBE
A/Comd 4 Cdn Inf Bde.

Medical Officers Certificate

This is to certify that I have examined *A.I.I. 7054 Pte. Kramicki J.A.*
and that he is fit to undergo trial by Court Martial.
~~unfit~~

In the field
19 Jan. 45

G. Lewis Capt......

TRANSCRIPT OF EVIDENCE IN THE TRIAL BY PGCM OF
A-117034 PTE KWASNICKI, J A, RHLI, HELD ON
19 JAN 45.

First Witness for the Prosecution, B-70375 L/Cpl Didmon, T D, 1 Bn, RHLI, being duly sworn, is examined by the Prosecutor.

- Q.1 - Will you tell the Members of the Court in your own words exactly what happened that night when the accused came to you?
- A.1 - At approximately 2000 hrs on 26 Dec 44 I was in the quarters of the MT Sec talking to Pte Beamer when Pte Kwasnicki entered and asked Pte Beamer if he had heard anything of his truck. Beamer said no, and Kwasnicki commenced to tell us how he had planned with another chap to take the truck. He did not state the time but told how they found a truck stationed behind this area in Cuyjk and how one man was placed to stand and watch while another man started the truck and when the man on guard whistled the driver moved the truck off. He went into details of the trip, and told how they drove carefully at moderate speed. He went on to say while they were going along they noticed the indicator on the dash for the left tank said empty and he thought by turning the switch to the right tank the truck would run on the other tank. So the engine started sputtering, he said, and this side of Antwerp the truck stopped. He told how they got out and looked at the engine and the carburator and tried to find the switch for the other tank. He further stated that after that they left the truck and went in to Antwerp. He said they took a Sten gun out of the truck and while he and another fellow were in Ghent the Provost took the gun away. I remember I noticed that Pte Hiscott came in and asked him what he had done with the mortar box in the back of the truck. He said nothing, that they left it with the truck. Hiscott said the box was filled with his clothes and Kwasnicki said if he had known that he would have disposed of them but they thought the box was full of bombs. Pte Beamer and myself warned Pte Kwasnicki that he was talking pretty carelessly and might get himself in trouble by doing so. He said he would not admit anything if he was brought up on it.
- Q.2 - Had the accused been drinking?
- A.2 - He had been drinking, sir, but he was not drunk.
- Q.3 - What mood was he in?
- A.3 - Sort of a bragging mood at the time, sir.
- Q.4 - Was the truck missed at the time when he went AWL?
- A.4 - Yes, sir.
- Q.5 - What is your job in the unit?
- A.5 - I am Coy Clerk for "B" Coy, sir.
- Q.6 - Do you know when the accused went AWL?
- A.6 - He was reported AWL at 0900 hrs on 30 Nov 44.
- Q.7 - Was the truck that was missing, that was mentioned in the conversation, from your Coy?
- A.7 - Yes, sir.
- Q.8 - What date was the truck reported missing?
- A.8 - At approximately 1000 hrs on 30 Nov 44.
- Q.9 - Were any others in your Coy reported missing at the same time as the accused?
- A.9 - Yes, Pte Kolonsky.
- Q.10 - When the accused told you about taking this Sten gun from the truck, and having it taken away by the Provost, did he mention any mags with it? A.10 - Yes.
- Q.11 - Did Beamer tell him how many mags there were or did the accused say how many?
- A.11 - I can't remember, sir.

The Defending Officer declines to cross-examine the witness.

Questioned by the Court.

- Q.12 - Can you tell us the number of the vehicle that was missing?
A.12 - No, I can't, sir.
Q.13 - If you heard the number would you know it?
A.13 - Yes, sir.
Q.14 - Was it 4255418?
A.14 - I am not sure that is it.
Q.15 - Do you identify anybody here in this courtroom as the man who made those statements to you?
A.15 - Yes, Pte Kwasnicki, right here, sir.
Q.16 - When he was telling you all this did you believe him?
A.16 - I believed him, sir, because he told the story in such detail. He didn't seem to miss any points.
Q.17 - Do you know if that vehicle was out without authority that night?
A.17 - No, I don't, sir.
Q.18 - Well when the vehicle was reported missing or stolen it was out without authority, wasn't it?
A.18 - Yes, sir.
Q.19 - Is the accused a driver in the unit?
A.19 - No, sir.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The witness withdraws.

Second Witness for the Prosecution, B-126380 Pte Beamer, A R, 1 Bn RHLI, being duly sworn, is examined by the Prosecutor.

- Q.20 - Are you the driver of a vehicle in "B" Coy, RHLI?
A.20 - Yes, sir.
Q.21 - Were you present in the same room with Cpl Didmon the night the accused came in and made certain statements?
A.21 - Yes, sir.
Q.22 - Will you tell us in your own words exactly what the accused said at that time?
A.22 - Kwasnicki came to me and asked me if I got my truck back. I told him no.
Q.23 - Where had the truck gone?
A.23 - My truck had been stolen the night of 29/30 Nov 44. He told me how he and some other fellows rode off in a vehicle the night it was stolen, how they got so far down the road and the vehicle stopped. How they changed the gas tank switch on the dash and forgot to change the switch on the floor and the vehicle would not start. They left it. I asked about the Sten gun in the truck and he told me he had taken the Sten gun and four mags and coming back, him and another fellow, the Provost had taken the Sten gun at Ghent.
Q.24 - Do you remember the number of your truck?
A.24 - No, sir.
Q.25 - Would you recognize it if you heard it?
A.25 - Yes, sir.
Q.26 - Was it 4255418?
A.26 - I don't remember that, sir.
Q.27 - Where was the truck parked?
A.27 - Right beside the dairy, sir.
Q.28 - How much petrol was in it?
A.28 - One tank was full and the other half full.
Q.29 - Is it the usual custom to fill them up at night?
A.29 - Yes, sir, but I was a little delayed that night and didn't both.
Q.30 - How far would half a tank of petrol take the truck?
A.30 - About 50 miles, sir.
Q.31 - And what personal equipment did you have in the truck?
A.31 - My Sten gun and four mags.
Q.32 - When you asked the accused to tell you about your Sten gun, did you ask him where the Sten and 4 mags were or just where were the Sten and the magazines?
A.32 - I asked him where was the Sten and 4 mags.

- Q.33 - Was there anything else of your equipment in the truck?
A.33 - No, sir.
Q.34 - Was that all the mags there were?
A.34 - Yes sir, those were by the gun but there was two others I had hidden behind the curtains.
Q.35 - Do you know anything about the mortar box?
A.35 - Yes, I put it in the truck. It belonged to Pte Hiscott.
Q.36 - Do you know the contents of the box?
A.36 - No, sir.

The Defending Officer declines to cross-examine the witness.

Questioned by the Court.

- Q.37 - Was the truck taken from B Coy area?
A.37 - Yes, sir.
Q.38 - Did you immobilize it?
A.38 - Yes, by removing the coil.
Q.39 - Do you recognize the accused in court?
A.39 - Yes, sir.
Q.40 - He is the man who told you this story?
A.40 - Yes, sir.
Q.41 - When he told you all this did you believe he was telling the truth?
A.41 - Sir, I don't know.
Q.42 - Did you think it was a cock and bull story?
A.42 - No, I believe him in a way.
Q.43 - Had he been drinking? Was he drunk?
A.43 - He had been drinking but he wasn't drunk.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The witness withdraws.

Third Witness for the Prosecution, B-126217 Pte Hiscott, G A, 1 Bn RMLI, being duly sworn, is examined by the Prosecutor.

- Q.44 - Pte Hiscott, on the night of 26 Dec 44 were you present in the MF shack along with Cpl Didmon and Pte Beamer when the accused came in and told you all a certain story?
A.44 - Yes, sir.
Q.45 - Were you present the whole time?
A.45 - Yes, sir.
Q.46 - Will you tell the Court in your own words what happened?
A.46 - On 26 Dec 44 at about 2000 hrs I was in a room with Pte Beamer and L/Cpl Didmon and we were discussing a vehicle that had been stolen. I was not very interested in that but I was interested in my clothing which I had in a mortar box in the truck in the back. I asked what happened to it and Pte Kwasnicki said he didn't know. He said he didn't know if it was clothing in the box, he thought it was bombs, because if he had know he would have disposed of it. That was about the clothing, the conversation I had with Kwasnicki.
Q.47 - Was the accused drunk in your opinion?
A.47 - I would not say he was drunk. He had been drinking.
Q.48 - What sort of a mood was he in?
A.48 - A very jovial mood, sir, very talkative.
Q.49 - Did you think he was just making up a story?
A.49 - It's pretty hard to tell, sir. He just came out with the statement if he had known the mortar box contained clothing he would have disposed of it.

The Defending Officer declines to cross-examine the witness.

No questions by the Court.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The witness withdraws.

First Defence Witness, the accused, A-117034 Pte Kwasnicki, J A, 1 Bn RHLL, being duly sworn, is examined by the Defending Officer.

- Q.50 - Pte Kwasnicki, you went AWL and returned to the unit on the night of 25 Dec 44, and the next night some people asked you questions about a truck, or talked about a truck that was missing?
- A.50 - Yes, sir.
- Q.51 - On the night of 26 Dec 44 had you been drinking?
- A.51 - Yes, sir.
- Q.52 - How much?
- A.52 - Quite a bit, sir. Some of the others who didn't drink gave me their rum issues and beer. I had at least 4 shots, doubles.
- Q.53 - Because of this drinking did you shall we say make up a story for them?
- A.53 - Yes, sir.
- Q.54 - Did anyone see you with that stolen truck?
- A.54 - No, sir.
- Q.55 - Did you ever take an MF course?
- A.55 - No, but I had a DR course, sir.
- Q.56 - Do you know anything about the operation of a truck?
- A.56 - Yes, sir.
- Q.57 - Do you feel able to get in a truck, and if the petrol were running out, you would know how to use the other tank?
- A.57 - Yes, sir.
- Q.58 - How would you do it?
- A.58 - Turn the switch in the floor and then turn on the indicator switch on the dash.
- Q.59 - Do you figure that under the influence of the drinks you had you said things that you would not say normally?
- A.59 - Well, I didn't get drunk, just thought jokingly of telling a story.

Cross-examined by the Prosecutor.

- Q.60 - Pte Kwasnicki, about this drinking incident. You say you had four shots of issue rum and how many pints of beer?
- A.60 - About six, sir.
- Q.61 - And at the time you were not drunk?
- A.61 - I wasn't drunk, just feeling good.
- Q.62 - You felt like talking?
- A.62 - Yes, sir.
- Q.63 - Now this switching of the tanks on the vehicle. You say you had a DR course?
- A.63 - Yes, and I was in the Army Service Corps for a while and fooled around trucks a lot.
- Q.64 - You made a statement that in switching petrol tanks you would turn the switch on the floor and then turn the switch on the panel?
- A.64 - Right, sir.
- Q.65 - The one on the panel is merely an indicator?
- A.65 - Right, sir.
- Q.66 - How did you know the truck went out of gas? You made that statement in the MF shack. How did you know it?
- A.66 - I don't know anything about that truck, sir.
- Q.67 - It was just a co-incidence?
- A.67 - Right, sir.
- Q.68 - How did you know there were 4 mags on the Sten gun?
- A.68 - Just talking, I guessed at it, sir.
- Q.69 - You guessed the exact number?
- A.69 - Well he said there was six.
- Q.70 - That was just a coincidence?
- A.70 - I didn't know, just took a guess at it.
- Q.71 - What about the mortar box?
- A.71 - They told me there was a mortar box. I said I didn't know anything about the mortar box.
- Q.72 - That is not what the witness said?

A.72 - Sir, it was quite a while before we got back and all the fellows had been talking it over. And some of it came out in orders.

Re-examined by the Defending Officer.

Q.73 - Did you know what was on that truck after you returned from AWL?

A.73 - Yes, sir.

Q.74 - And on the night of 26 Dec 44 when you had the drinks you decided it would be a joke to tell them a story about it?

A.74 - Right, sir.

Questioned by the Court.

Q.75 - Did you make all these statements up on the night of 26 Dec 44?

A.75 - Yes, sir.

Q.76 - Why?

A.76 - I was feeling pretty good. I asked Beamer if he had got his truck back, and then as a sort of joke he asked me what I had done with it. I made up a story.

Q.77 - Had you found the truck?

A.77 - No, sir.

Q.78 - It was all lies?

A.78 - Yes, sir.

Q.79 - Now about these Sten gun mags, it was only by chance you happened to know about these mags?

A.79 - Yes, sir.

Q.80 - And it was only by chance, you said the truck had run out of gas down the road? You didn't know it?

A.80 - That's right, sir.

Q.81 - And it was only by chance you happened to know about the mortar box?

A.81 - No, sir, the fellows told me about that after.

Q.82 - Has this missing truck been located?

A.82 - Yes, sir.

Q.83 - Where was it found?

A.83 - I still don't know, sir.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The Prosecutor makes the following closing address.

Mr. President, the prosecution that this man is guilty of this charge for the following reasons. We have established the fact that the accused was reported AWL and the same night the truck was reported missing. We have shown that the accused knew there were 4 mags with the Sten gun, and that there was this mortar box in the truck. We have established the fact that he was not drunk when he told the men his story. I would say it is not probable that this man could make up such a detailed story unless he knew something about the case and if he does know something about it then he is guilty of this charge.

The Defending Officer makes the following closing address.

The accused is charged with taking a WD Vehicle the same night that he went AWL. That is purely coincidence. There is no witness or evidence to the effect that Pte Kwasnicki took this truck, or that he interfered in any way with this missing vehicle or had any dealings with the truck. Then he returns from AWL and being ribbed about the missing truck, and feeling pretty good on that night, the 26 Dec 44, in those circumstances, he decides to tell a tall story as a joke. He knew nothing about it except what he had heard and from that he made up his story. I don't feel that sufficient evidence has been shown against Pte Kwasnicki to convict him on this charge.

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In the opinion of the Court and Judge Advocate, it is not necessary for the Judge Advocate to sum up on this charge.

JA to President - Mr. President, are there any further matters on which you wish me to advise the Court?

A. - No.

JA to Prosecutor - Mr. Prosecutor, are there any further matters on which you wish me to advise the Court?

A. - No, sir.

JA to Defending Officer - Mr. Defending Officer, are there any further matters on which you wish me to advise the Court?

A. - No, sir.

Summary of Evidence in the case of
A117034 Pte. Kuasnieki J. F.

1 Bn R.H.L.I. a soldier of the Canadian
Army Overseas.

The accused is informed of his rights.

The C.O. directs that the evidence be taken on oath
Charge 1.

First Witness for the Prosecution B 70375 S/Cpl
Dedmon T.D. 1 Bn R.H.L.I. sworn states: At approx
2000 hrs 26 Dec. 44 Pte. Beamer and myself were in
the quarters of the M.T. section. The accused entered appearing
to have had a few drinks and proceeded to state how he
and three others including Pte Kolonsky C had planned
to take a truck. They explained how one man stood guard
while the others started the truck. Upon hearing a whistle
from the guard the driver moved the truck off. Then they
went to "C" or "A" Coy. to pick up some of the belongings
of one of them. Then he described their trip to Antwerp
emphasizing that they drove at a moderate speed. When
they noticed the left fuel tank gauge registering empty, the
accused stated he thought all they had to do to change
the tanks was to change the switch on the dash panel
Consequently shortly after they found the truck had run out
of petrol. He stated they pulled over to the side of the road
and examined the carburetor. Pte Beamer asked him where
this happened and the accused replied it was some place
starting with "M" he wasn't sure of the name. Pte Beamer
asked the accused of the whereabouts of some of his
(Pte Beamer's) belongings which were in the truck including
sten gun. The accused replied that he and Kolonsky
had taken the sten and m + 4 maps and had carried them
for 3 or 4 days and when in Ghent they came in contact
with a Provost who took the weapon from them. At that
point. At that point Pte. Hiscott J. H. entered and asked
the accused if he had seen the mortar box containing clothing
in the back of the truck. The accused answered he did
but thought it contained ammunition otherwise he
would have sold the clothing which the box contained.
Pte Beamer asked the accused why he had taken the
truck - The accused said if he had known it was
"B" Coy. truck he would not have taken it but as it
was sitting outside he thought it was a spare one.
Pte Beamer warned the accused that the statements

• He had issued would probably get him into trouble. The accused said he wasn't afraid of such because he wouldn't admit anything and he wouldn't bring any other names into the affair.

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The accused declines to cross-examine.

sqd. F. E. Didmon

Second Witness for the Prosecution - B/26380

Pte. Beamer A.R. 1 Bn. R.H.L.I. Sworn states: I have read the evidence given by S/Cpl. Didmon and wish to corroborate it except that the accused did not say exactly how many others were with him or mention any of their names. It was "C" Coy. where they were to pick up some belongings of one of them.

The accused declines to cross.

sqd. Beamer A.R.

Third Witness for the Prosecution - B/26217 Pte.

Hiscott G.A. 1 Bn. R.H.L.I. sworn states: I have read the evidence of S/Cpl. Didmon referring to the mortar box containing clothing in the truck and I wish to corroborate that evidence.

The accused declines to cross-examine.

sqd. G. G. Hiscott

Charge 2 and 3.

First Witness for the Prosecution: M50766

Sgt. Peters E.M. 1 Bn. R.H.L.I. Sworn states: at approx. 0900 hrs. 31 Dec. 44 I ordered the accused to report to the kitchen for kitchen fatigue. The accused then said "I am not going until I have washed" He then picked up his shaving kit and towel and proceeded to the wash room. He did not report to the kitchen. The accused asked me why I had not drawn for the duty as I had done on some other occasions and I replied that I did not think it was necessary. The accused then said, "Do you know what I think, you are a cunt Sgt." I ordered the accused then to report

to the kitchen immediately.

Cross-Examined by the accused:

Q 1 - I was in bed when you informed me that I was to go on duty was I not?

A 1 - Yes.

Q 2 - Then I called you that name - right?

A 2 - Yes.

Q 3 - Then you told me I was under (open or close) arrest?

A 3 - I called Cpl. Jennings as a witness and told you that I would charge you.

Q 4 - Did you send another man down to the kitchen to take my place when I went to wash?

A 4 - Yes - and when you returned I told you that you were under close arrest and was not to leave the room

sgt. E. M. Peters Sgt.

Second Witness for the Prosecution: M56310

Cpl. Jennings M.R. 1 Bn. R.H.L.I. sworn states: "I have read the evidence of Sgt. Peters and corroborate it"

The accused declines to cross-examine

sgt. Cpl Jennings, R.P.

The accused having been duly cautioned in accordance with R.P. 4(e) says "I wish to be sworn":

The accused A117034 Pl. Kwasmicki J.A. sworn states: With reference to the first charge "When my chum and I came back from being A.W. the fellows started ragging us and asked us what we did with the truck. We knew nothing of the truck being missing then and we started to fool around with them with it. On the night of 26 Dec. 44. I had a few drinks and just looking for fun. Any admissions I made were just made jokingly."

(4)
With reference to the 2 and 3 charges. "After I called Sgt. Peters that name he put me under either open or close arrest (I forget which it was) - - - and then he told me not to leave the room. When I came back from washing the boys were picking cards to see who would take the duty - Sgt. Peters again told me I was under arrest."

Sgt. J. A. Kwamiech

The accused does not wish to call witnesses in his defence at this point.

Certified that R.P. 44

Complied with.

In the field

5 Jan. 45

Sgt. W. F. Rees Capt

Officer detailed to take the Summary.

"I wish the services of Capt. Smith as my defending officer if he is available."

In the field

5 Jan. 45

Sgt. J. A. Kwamiech

Julian Alexander Kwamiech

23 Jan 25

MEM 6
(AR 122)
40/44/100 (12/9)

(Character

Service or
Proficiency Pay N/A

Grade
8Jan43

Signature
Company, etc

one
Sheet No N/A

Period not reckoning towards
freedom from extra time

NIL

No and date
of last drink

Date of last entry in
Company Conduct Sheet

Reg. Battery
Name
KWAASNICRI J.A. of Company
No 117034

Remarks	Date of award or date of entry into force	By whom awarded	Prisoners awarded	Names of Witnesses	OFFENCE	Days of drunken ness	Rank	Date of issue	Place
Lt JF Juby	30 Sept 43	Lt-col AS Macpherson	7 days C.B.	L/Cpl Ewan	Old sheet destroyed war 8 Jul 43 AA 24 (4) WILLFULLY damaging public property AA40 conduct to the pres etc, in Cpl Williams			29 Sept pte	Debert NS
Lt-col AS Macpherson	13 Sept 44	Lt-col AS Macpherson	Fort 2 days PAY PRA I 149 (2)		AA40 conduct to the pres etc, in Cpl Williams ed to keep his position in the ranks his platoon after being duly warn-			8 Sept pte	Field
A/Lt-col AS Fort 2days Macpherson PAY PRA I 149 I B	20 Sep 44	A/Lt-col AS Fort 2days Macpherson PAY PRA I 149 I B	E 15 Days PAY 149 (2)	Cpl Giberson Cpl Penny A. PRA I 149 (2)	AA15(1) WOVS A/L from 2359 hrs 17 Sept until 0930 hrs 19 Sep 44(1 day 9 hrs 31 min)			17 Sep pte	Field
Whitaker PAY for A/L Total for 37 days PAY (170)	18 Dec 44	Lt-col W.D. Fort 9 days 149 I B	28 days P.P.	L-Cpl Richardson Documentary	AA Sep 15(1) A/L from 0900 hrs 30 Nov 44 to 0130 hrs 9 Dec 44 18 days 13 hrs 30 mins)			30 Nov pte	Field

10/12

COUNTER NUMBER 551679

HOUR 22 00

OPERATOR'S INITIALS JB

RELIEVING OPERATOR V. J. M.

HHH 79

SPR KYER E.K.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

- 1. The accused may not plead or be found guilty on more than one of two or more charges laid in the alternative.
2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

- I. If pleas to all charges are GUILTY, use Record Form B below.
II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.
III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,
(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C;
(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty to discretion of Court, (ii) to try the accused on all such alternative charges as if he had pleaded Not Guilty to discretion of Court.

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

DLR 1st. & 3rd.

RECORD FORM B-PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President merely complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s) and that on his plea of guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of guilty, or which show provocation or extenuation in respect of which in your interest stand the effect of the plea of guilty, we shall advise you to change your plea to Not Guilty.

President to accused: Do you wish to make a statement? Ans NO SIR
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court announces the accused's statement. The Court then asks the accused to change his plea to guilty or not guilty. The Court then asks the accused to change his plea to guilty or not guilty. The Court then asks the accused to change his plea to guilty or not guilty.

B4. On the charge(s) to which the plea(s) of guilty are not changed the President records finding(s) of guilty in Part I of the Schedule.
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as guilty, Courts will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C-PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereon on a separate sheet.)

C3. The accused having been found guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D-PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO SIR
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken. NOTE ATT
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed. The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s). The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 42 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.)
NB If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence. You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination. You may, however, make a statement without being sworn, and you will not be subject to cross-examination. But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony. You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans To give evidence. Do you intend to call witnesses on your behalf?

Ans No Sir. Another witness or two character only? Ans
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AFS. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s) of the Court is (are) recorded in Part I of the Schedule.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

B3-4 The President announces the findings, if any, of the Court and asks to be asked that the findings of the Court are accordingly terminated.
(1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E-PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? Ans NO SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service, and certified true copy of Conduct Sheet, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.
(1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? Ans Yes also by Defending Officer NOTE ATT.
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(f) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence. The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA.
(1. When several accused tried separately see RP 70. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 209, 222, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 41(18), 68(1), KR Can 364. 2. RP 50. As to release from arrest by Conferring Offr see KR Can 567. As to assembly and disposal of record after trial see instns on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C-6083 Spr Kyer, Earl Kenneth, Royal Canadian Engineers, No.1. Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with:-

FIRST CHARGE
AA 15 (1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, absented himself without leave from 2200 hours 25 October 1943 until apprehended at 1510 hours 25 March 1944. (Absent 151 days, 17 hrs 10 mins)

SECOND CHARGE
AA 9 (2)

WHILE ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER

In that he

In the Field at or about 1530 hours 25 Mar 44, at Detn Room No.6. Canadian (Area) Provost Coy, when ordered by K-53452 Sgt. Faucher J. his superior Officer to scrub his bed space did not do so.

THIRD CHARGE
AA 40

WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

In the Field, at or about 1510 hours 25 Mar 44, was improperly in possession of a MBM 1(Part 1) purporting to be the property of C-53598 Spr. Ross D.L.

In the Field
29 March 1944

G.R. Whyte Col.
(G.R. Whyte)
Officer Commanding
1 Cdn Engr Rgt. Unit.
Cdn. Army Overseas

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

4 Apr 44

P.R. Shields
(P.R. Shields) Brigadier
Comd "B" Group
Cdn. Rgt. Units.

DLR.

FIELD GENERAL COURT-MARTIAL

CFA90 (In lieu of AFAB)
4/1/58 (107) (2508)

(Whether the accused to be tried in under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fn. RR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-6083	Spr.		Earl Kenneth	Kyer	1 CERU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on ~~(date)~~ endorsed by me, ~~for by one of my staff for me~~, "To be tried by Field General Court-Martial".
2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior tribunal etc)~~
3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.
4. ~~I am unable to appoint to the Offrs of the Court, the Offrs of the Unit, for the reasons I have attached hereon.~~
- (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)
5. ~~I have appointed a Judge-Advocate from the Offr mentioned in number.~~
- (RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt. Col.	D.L. Redman	HQ CRU
<small>(Rank)</small>	<small>(Must be named. RP 106.)</small>	<small>(Unit)</small>

MEMBERS.

A Captain	to be detailed by	1 CSRU
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A Lieutenant	to be detailed by	1 CERU
<small>(Rank)</small>	<small>(Named or detailed. RP 106.)</small>	<small>(Unit)</small>

WAITING MEMBER.

<small>(Rank)</small>	<small>(Named or detailed, if any. RP 106.)</small>	<small>(Unit)</small>
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JUDGE-ADVOCATE.

<small>(Rank)</small>	<small>(Must be named, if any. RP 106.)</small>	<small>(Unit)</small>
-----------------------	---	-----------------------

On Active Service in the Fd

in England	P.R. Shields	
<small>(Country)</small>	<small>(Signed personally. RP 105 fn 2.)</small>	<small>(Rank)</small>

Date: 4 TH APR 44.	Commanding (P.R. Shields) Brigadier	
	"B" Gp CRU	Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

DIA.

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFER UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2692.)

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (RP 95(C)), any objections (RP 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpi of the pl to which Pte Smith belongs. The accid in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accid to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (RP 95 fn 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (RP 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (RP 60(C), 87(C), 92(C) (D).)

(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)), or evidence by accused, as to facts or his character or both. (See RP 41 fn 3, 40 fn 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (See RP 40 fn 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (RP 86(B)), or to prove previous convictions when accused has called witnesses as to character. (RP 86(C).)

(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. (See RP 40 fns 8-12, 87(C), 92(C) (D).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (When accused charged jointly see RP 61.)

(vi) Closing address by Prosecutor. (See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).)

(vii) Summing up by JA, if any. (RP 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On sep.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (KR Can 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (As in admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 1) (g) (A).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (RP 95(D).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (AA 53(9), RP 118(C), MML p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined
No.C.6083 Spr. Kyer E.K. of No.1. Cdn. Eng. R.U.
and in my opinion he is fit to undergo trial by Court martial.
Has scabies and treatment to be started immediately after Court
Martial proceedings.

Station Field.
Date 5 April 1944

C. McMillan Capt.
Medical Officer.

D.L.R.

Case of

C.6083 Spr.

Earl Kenneth KYER

1 CERU

PROSECUTION-

2nd. Charge

First Witness

NOTE D-3

K.53452 Sgt. FAUCHER J. Cdn. Provost Corps, London, having been duly sworn states:

At London at about 1530 hours Mar 25, 44 I was Detailed IC Detention Relief No.6. Coy Cdn. Provost Corps. The accused was brought in, whom I now recognize, as an absentee from his unit. He was booked in and as he marched into his cell I ordered him to scrub his bed space and he replied "I will do no God damn work in this place" I informed him that a charge would be laid. He did not scrub the floor space.

Cross-examined by the Defending Officer

Q When the prisoners come into your detention barracks is it customary for you to order them to scrub the floor space?

A. Not always immediately Sir, The accused was very difficult though and that is the reason I ordered him to scrub the floor. It is true that the barracks are to be cleaned as soon as the men arise in the morning. The barracks on that particular morning had been cleaned, but they sometimes get dirty by that time in the afternoon. We sometimes have 30 to 40 men in a day in and out of the place and they are allowed to tramp all over the room.

No re-examination.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

WITNESS WITHDRAWS

Second Witness

L.12065 Cpl. Myland LS, Cdn. Provost Corps, London, having been duly sworn, states:

About 1503 hours 25 March in London I was on duty in company with Sjt Faucher. Sgt. Faucher had the occasion to order the accused, whom I now recognize, to clean his bed space. I heard him order him. The accused exclaimed in a loud voice that he would not do any God damn work. In my presence Sgt Faucher again ordered the accused to do the work and the accused refused.

Cross-examined by the Defending Officer

Q Cpl, on that day were there many men detained in that particular room?

A. As to the number I could not state, but there were a few in the room sir. The time of day was 1530 hours. The rest of the men in detention were preparing to clean up the detention room. The room was very dirty. It is cleaned three or four times a day, as it must be kept clean at all times. I recognize the accused as the man who refused to obey the order. He did not appear to be intoxicated whatsoever, sir.

As No re-examination.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH R.P.83(B)

THE WITNESS WITHDRAWS.

THE PROSECUTION IS CLOSED.

DEFENCE

- NOTE D-5

DLR

First witness

The accused, C.6083, Spr. Earl Kenneth KYER, 1 CERU, having been duly

sworn states:

- Q. Will you tell the Court in your own words just what you remember of that afternoon from the time you were picked up until the incident took place.
- A. Yes, Sir. When I went into No.6. Detention Bks I was not in a very good condition. I had been in and out of a few pubs just before that. I remember Sgt. Faucher asked me if there was anything wrong with me when they searched me so I was sent to the MO. When I came back from the MO he grabbed me by the throat and shoved me into a corner. Later I tried to come back to give my right name as they had booked me under another name, and I was told to go into a room, which I did, and went to sleep, and I don't remember anything after that, Sir.

Cross-examined by the Prosecutor.

- Q. At that time you were being sent to the MO and everything was clear in your mind then?
- A. Yes, I remember the MO examining me, but from then on when I came back I hav't the least recollection. I remember at no time the Sgt giving me any order to scrub the floor space, either before I went or after I came back.

No re-examination

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH R.P.83(B)

PROSECUTOR ADDRESSES THE COURT ON THE FINDING

It appears that the accused was in a rather intoxicated condition, that is, from his own statement and from the Sgt's testimony, and both their statements say that he was in rather belligerent attitude at the time after he was given the order to clean or scrub his bed space. Although he did seem to recollect very clearly up to the time he was sent to the MO, immediately after that he says that everything seems to have gone blank in his mind. Judging from both his testimony and that of the Sergeant and his actions at the time, it seems he was very difficult to handle and did not seem to cooperate with the provost at that time.

DEFENDING OFFICER ADDRESSES THE COURT ON THE FINDING

I submit sir, that the Prosecutor has helped my defence insofar that he even he has observed himself that apparently the man did not understand or realize what order or that order had been given him.

THE COURT IS CLOSED FOR FINDING

STATEMENT IN MITIGATION NOTE E-3
(By accused)

I have not been a very good soldier since I joined the army I must admit. In civilian life I was a Merchant Seaman. When war broke out the boat tied up, I quit my job and joined the army and enlisted in Picton. I tried to get a transfer into the Navy when I found the life in the Army did not satisfy me. I started to get fed up and was always that way on civvy street. I got married in Canada in 41, had a little trouble with my wife. I had got a bad crime sheet so came overseas. I soldiered for a few months in a construction company until being transferred to a holding Unit and since I have been in this holding Unit. I have tried to get a transfer out of the army into either the Merchant Marine or the Merchant Navy or the RCN, and between having trouble with my wife back home and trying to get this transfer with no results, I just got fed up and took off. I am 22 yrs of age, Category "A" and my education is Grade IX. After this is over I do wish the Court martial would recommend me to get a transfer to the Merchant Navy. I know I could do better there.

DLR.

EXHIBIT.

M.B.M. Part 1 in the Name of C-53598

ROSS, Donald Luther.

Signed by Lieut. J. Stewart Paterson, RCA.
for Officer i/c Records, Canadian Military
Headquarters.

Marked EXHIBIT"E" for the Summary of Evidence.

Initialled by DLR (Lt. Col. Redman) President
of the Court martial.

RECORDS
CERU

RECORD of the Declaration of a Court of Inquiry assembled at
No.1. C.E.R.U. on the 17th. day of November 1943
for the purpose of investigating and recording the absence
without leave, from his duty, and deficiency, if any in the
arms, Ammunition, Equipments, ^{INSTRUMENTS} Regimental necessaries or
clothing of No. C-6083 Spr. Kyer E.K.

DECLARATION

The Court declare that C-6083 Spr. Kyer E.K. of 1 CERU
illegally absented himself without leave from No.1. C.E.R.U.
at 2200 hours on the 26th. day of Oct. 1943, that is he is still
so absent, and that on the 27th. day of Oct 1943 was deficient,
and that he is still deficient of the following articles to the
value of \$18.20 (75%)
(75% of the vocab. rate. See list on reverse of this sheet)

Signed at No.1. C.E.R.U. this J.M. Padden Lieut. RCE PRESIDENT
17th. day of Nov. 1943 J.A. Chivers Lieut. RCE MEMBER

A. Hodgkinson Lieut. RCE MEMBER
C.H. Whyte

DLR Signature of Commanding Officer G.H. Whyte Colonel.

Certified true copy R.E. Crangley Major.
Signature of Officer having custody of Original
Record.

1 C. Eng. R.U.

Entered in Part 11 Orders
date 23/11/43 Order No.281.

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 Apr 43

I certify that No.C.6083 Rank Spr. Name Kyer E.K. Unit No.1.C.E.R.U.

was arrested at London (Place)

at 1510 hrs. on 25 Mar 44 (date) and that at the time of his arrest he was wearing (military Uniform) or (xxxxxxxxxxxxxxxx).
Signature of Provost-Marshall, Assistant Provost Marshall or other officer or the Officer Commanding of the portion of His Majesty's Forces or the Officer, Warrant Officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest.
(Strike out part inapplicable)

London
25 Mar 44

R.J. Kidston Capt.
(R.J.Kidston) Major M.R. R.J. Holmes) D.A.P.M.
Assistant Provost Marshall Cdn. Military Headquarters
Canadian Military Headquarters. DLR.

CHARGE

ARMY FORM B.252

No.1 C.E.R.U.

Regiment.

CHARGE against No.C.6083

Rank Spr.

Name Kyer E.K.

Place London

Date of Offence 25 Mar 44

OFFENCE W.O.A.S. was absent without leave.

(2) In possession of and producing a false CFA 24. (3) In possession of and producing an M.B.W.1 Pt. 1 not his own. (4) Stating a falsehood to a member of the Cdn. Provost Corps. (5) Not in possession of any means of identification. (6) Using obscene language.

R.J. Kidston
(R.J. Kidston)
Assistant Provost Marshall
Canadian Military Headquarters.

Name of Witnesses:-

RE
Cpl. Smulnad A. Cdn. Provost Corps.
L/Cpl. Horsman K. Cdn. Provost Corps.

P.T.O.

STATEMENT OF EVIDENCE IN THE CASE OF
C.6083 Spr. Kyer E.K.
No.1. C.E.R.U.

Sir,

At London at about 1510 hrs on the 25 Mar 44 I was on patrol duty in company with L/c Horsman K. at Kings Cross Stn where I saw the a/m soldier. I approached him and requested to see his pass which he produced. Not being satisfied with this I then requested to see his M.B. M.1 Pt. 1 which he also produced (C.F.A.24 and M.B.M.1 Pt.1. attached hereto) Still not being satisfied with this I conducted him to the Detention Room No.6. Cdn. (A.P.A.) Provost Coy for further questioning. Upon arrival at this office he adopted a very truculent attitude and used the most obscene language and he was placed under arrest and entered in the charge book under the name of C.53598 Spr. Ross D.L. the particulars in which his pass and M.B.M.1 Pt. 1. were made out in.

On further events it was ascertained that his particulars were the above, however he was not in any means of identification whatsoever, to prove that he was C.6083 Spr.Kyer E.K. of No.1. C.E.R.U. he was A.W.L.

However, Records Acton was contacted and his description proved him to be the a/m.

A.P.Smuland Cpl.
K.37064 Smuland A.

DLR

London
25 Mar 44

Sir I have read over and corroborate the above statement.

K.S. Horsman
G 7147 Horsman K.S.

London.

statement of EVIDENCE in the case of
C 6083 Spr. Kyer E.K.
No.1. C.E.R.U.

Sir,

At London at about 1530 hrs on the 25 Mar 44 I was on duty in the detention Room No.6. Cdn. (Area) Provost Corps in Company with Cpl. Myland L.S. when the a/m soldier was brought into this office, as an absentee from his Unit.

He placed in the Detention Room where he was ordered to scrub his bed space. I again ordered him to do same and he again refused. I then informed him that a charge for neglecting to comply with an order would be laid against him.

London
25 Mar 44

J. Fauchier Sgt.
K.53452 Fauchier J.

Sir, I have read over and corroborate the above statement.

London
25 Mar 44.

L.S. Myland, Cpl.
L.12065 Myland L.S.

DIR.

CHARGE

Army Form B.252

No.1.G.E.R.U.

Regiment.

CHARGE against No.C.6083

Rank Spr.

Name Kyer E.K.

Place London

Date of Offence 25 Mar 44

OFFENCE W.O.A.S. did neglect to comply with an order given by a member of the Cdn. Provost Corps.

Names of Witnesses:-

Sgt. Fauchier. Cdn. Provost Corps.

CPL. MYLAND L.S. Cdn. Provost Corps.

P.T.O.

31 Mar 44

I C-6083 Spr. Kyer E.K. do not desire to have an officer assigned by the Convening Officer to represent me at my forthcoming trial by Court martial.

E. Kyer
C-6083 Spr. Kyer E.K.

I, C/6083 Spr. Kyer Earl Kenneth hereby certify that I have received a copy of the Summary of Evidence taken subsequent to my apprehension for trial. The accompanying charge sheet has also been received.

In the field
30 Mar 44

E. Kyer
C/6083 Spr. Kyer E.K.

LIST OF EXHIBITS

Exhibit "A" Declaration of Court of Inquiry

Exhibit "B" Certificate in accordance with P.C. 2797 of 10 Apr 42

Exhibit "C" Statement, purporting to be signed by K.37064
Cpl. Smuland A. and G. 7147 L/Cpl Horsman K.S.

Exhibit "D" Statement, purporting to be signed by K.53452
Sgt. Faucher J. and L.12065 Cpl. Myland L.S.

Exhibit "E" M.B.M.1 Part 1 purporting to be the property
of C/53598 Spr. Ross D.L.

Summary of Evidence in the case of C 6083 Spr. Kyer, E.K., R.C.E., on the strength of No. 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army Overseas.

Documentary Evidence: ~~NO. 1~~ CANADIAN ENGINEER REINFORCEMENT UNIT RC

1. Record of the Declaration of a Court of Inquiry assembled at ~~C.S.R.C.~~ on the 17th day of Nov. 1943 for the purpose of investigating and recording the absence without leave, from his duty, and deficiency, if any, in his Arms, Ammunition, Equipment, instruments, regimental necessaries or Clothing of C 6083 Spr. Kyer, E.K.

(Certificate marked exhibit "A")

2. Certificate in accordance with P.C. 2797 dated 10 Apr 42 purporting to be signed by the A.F.M. at C.M.H.C., relating to the accused C 6083 Spr. Kyer, E.K.

(Certificate marked exhibit "B")

FIRST WITNESS

For the prosecution

PAGE 2 OUT OF 3 RC

K 27064 Cpl. Smuland, A. ^{OF THE} Canadian Provost Corps: RC
A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of evidence.

(Statement marked Exhibit "C")

Having regard to the exigencies of the service attendance of this witness cannot in my opinion be procured.

NEARLY

J.A. McLean, Lt.

(J.A. McLean) Lt.
Officer taking Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

SECOND WITNESS

For the prosecution

G 7147 I/Cpl. Horman, K. A. ^{OF THE} ~~2nd~~ Canadian Provost Corps: RC
A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence.

(Statement marked Exhibit "C")

Having regard to the exigencies of the service attendance of this witness cannot, in my opinion be readily procured.

J.A. McLean, Lt.

(J.A. McLean) Lt.
Officer taking Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

MM

THIRD WITNESS
For the Prosecution

K 53452 Sgt. Faucher, J. ^{OF THE} Canadian Provost Corps: 16
A written statement of this witness's evidence purporting
to be signed by him has been read to the accused and is
included in this Summary of Evidence.

(Statement marked Exhibit "D")

Having regard for the exigencies of the service attendance
of this witness cannot, in my opinion, be readily procured.

J.A. McLean Lt.
(J.A. McLean) Lt.
Officer taking Summary of Evidence.

The accused does not demand the attendance of this witness
for cross-examination.

FOURTH WITNESS
For the Prosecution

I 12065 Cpl. Myland, I.S. ^{OF THE} Canadian Provost Corps: 17
A written statement of this witness's evidence purporting
to be signed by him has been read to the accused and is
included in this Summary of Evidence.

(Statement marked Exhibit "D")

Having regard to the exigencies of the service attendance
of this witness cannot, in my opinion, be readily procured.

J.A. McLean Lt.
(J.A. McLean) Lt.
Officer taking Summary of Evidence.

The accused does not demand the attendance of this witness
for cross-examination.

The accused was caution^{ed} as follows, "Do you wish to make
any statement or to give evidence on Oath? You are not
obliged to say anything or give evidence, unless you wish
to do so, but whatever you say or any evidence you give
will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his
defence.

RC FOUR I certify that the foregoing Summary of Evidence consisting of
two pages was taken down by me in the presence and hearing of
the accused and that Rules of Procedure 4 (C)(D)(E)(F) &(G)
have been complied with.

1 C.E.R.U.
29 Mar 44.

J.A. McLean Lt.
Officer detailed to take Summary of
Evidence. EAM

No C. 6083 Name Kyer E.

Sqn. Battery,
or Company

Corps R.C.E.

Date of enlistment 31 May 42
GC BadgesService or
Proficiency PayMFM 6
(AFB 122)
40/PAS/136 (3128)Date of last entry in
Company Conduct Sheet 11 Sep 40
No. and date
of last drunkPeriod not reckoning towards
freedom from extra fine

Sheet No

Signature OC
Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order suspending with trial	By whom awarded	Remarks
D.L.R. Camp Bordon	7 Apr 41	Pte		AWL 2 days 17 hrs 15 mins A.A.15(1)	Cpl. Holmes	10 days C.B. 5 days pay Cost \$12.00	14 Apr	Major Hare	and in accordance with CASO 2084 & 319/ Forf 3 dys Pay
	27 Dec 40	Pte		47 days 21 hrs 50 mins AA 15(1)	Cpl. Davies	28 Days Det.	10 Mar 41	Maj. Keans	10 & dys pay.
	28 Apr 41	Pte.		AA 15(1) AWL 21 days 4 Hrs 10 min	Cpl. Davies	28 Days Det.	19 May	Maj. Keans	22 days pay
	16 Sep 41	Pte.		AWL 6 days 2 hrs 45 mins.	Cpl. Toulouse	7 day C.B.	22 Sep	Capt. Walk	Forf. 7 days pay.
	26 Sep	Pte.		AWL 1 day 23 hrs 45 min.	Cpl. Toulouse	96 hrs Detn.	29 Sep	Maj. Gooday	Forf. 2 days pay.

(PTO)

Place	Date of offense	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Apr 42	Spr.		AA 40 Operating a card game	Sgt. Ganner	7 days pay	29 Apr.	Capt. Woods	Forf. 7 days pay
"	1 June 42	Spr.		AWL from 0745 hrs, 1 June 42 to 1 JUNE 42, 7 HOURS 40 MINS	Sgt. White	1 days pay AA 46 2C	1 June	Capt. Woods	Forf. 1 days pay
"	6 June 42	Spr.		AA 40 Failing to make up bed or tidy room	Sgt. White	4 days C.B.	8 June	Capt. Woods.	
"	19 Sep 42	Spr.		AA 15(1) AWL 2200 hrs 19 Sep. to 2200 hrs 20 Sep. 42 (24 Hours)	L/c Barrett	Forf 1 days pay 2 dys F.P. 2 Days pay	22 Sep	Lt. Col. CN Mitchell	Forf Total 13 days pay.
"	29 Nov 42	Spr		AA 15(1) AWL from 2359 hrs 29 Nov. to 2130 hours 30 Nov 42 (21 Hours 30 mins)		10 days F.P. Forf 1 days pay 10 day Forf. Pay	2 Dec 42	???????	

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10/3 43	Spr		AWL 4 days AA 15(1)	Sgt. Roberts	14 days C.B. 14 days Fof. pay	14/3/43	V.C.H.	Forf 4 days Pay.
Field	18 May 43	JPK		AA 15(1) AWL from 2200 hrs 17 May to 2200 hrs 18 May (24 Hours)	Spr. Player	3 days F.P. Depr 3 days Pay	20 May	Lt. Col. Mitchell	Forf 1 days Pay
Field	18 Jun 43	Spr.		AA 15(1) Absent 2 days 13 hrs.	Doc.	168 hrs. Det. 7 days Pay	12 June	Lt. Col. Mitchell	Forf. 3 days. pay.
Field	6/6/43	Spr.		AA Sec. 24(2) WOAS Losing by Neglect his Regt'l equipment and necessaries to the value of £0.10.2	Doc.		14/6/43	Lt. Col. Mitchell	Deduction of pay to cover cost of deficiency £0.10.2

No C.6083 Name Kyer E.K.

Sqn, Battery,
or Company

Corps R.C.E.

Certified True Copy

Sheet 3.

MFM 6

Date of
enlistment

31 MAY 40 GC
Badges

Service or
Proficiency Pay

(AFB 122)
40/PAS/135 (3428)

Date of last entry in
Company Conduct Sheet

N/A

No and date
of last drunk

N/A

Period not reckoning towards
freedom from extra fine

Sheet No

Signature OC
Company, etc

Character

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Aug 43	Spr.		(1) AA.15(1) WOAS AWL 0600 hrs 23 Aug 43 to 0830 hrs 23 Aug (2 Hours 30 mins) (2) AA 15(1) WOAS AWL 2300 hrs 25 Sep.43 to 1830 hrs 11 Sep.43 (16 Days 19 hrs 30 Mins)	Doc.	21 days F.P.	16 Sep.43	D.O.#224 18 Sep.43	Total forf. 38 days pay.
Field	22 Oct.43			Original sheet lost, new one made up from MPM 4 Certified the above is a true extract from M.F.M.4.				D.C. MacMillan, Major RCE	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 Oct. 43	Spr		AA.15(1) AWL 2200 hrs 2 Oct.43 to 0700 hrs 3 Oct. 43 (9 Hours)	Doc.	28 Days F.P. 28 Days Forf. Pay.	25 Oct	Lt.Col. Rutherford	Forf.15 days pay. Total Forf. 43 Days pay.
				(2) AA.15(1) AWL from 2200 hours 3 Oct. to 2345 Hours 16 Oct (13 days 1 hr. 45 min)					
				(3) AA 40 Conduct to the Prej. Etc. Being in possession of a doc. purporting it to be genuine leave pass.					
				(4) AA.40 Cond. to the Prej. etc. not being in possession of his NBM 1. or any other means of identification.					
				(5) AA 40 Cond.to the Prej etc. possession of a Cdn.Passport	Being in Book NO.94159				
						J.G. Grant, Capt. CERTIFIED TRUE COPY. 30 Mar 44.			

11 (In the case of an officer) The accused holds in the Royal Canadian Air Force the rank of Permanent Force Unit.

...N/A.....DatedN/A..... and in his regiment (or Corps) the rank of...N/A.....dated.....N/A.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:-

.....Date of Promotion.

In the rank of.....N/A.....years
In the rank of.....N/A.....years
In the rank of.....N/A.....years

Note.- If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a Court martial or a Civil Court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused C.6083 Rank. Spr. Name Eyer E.R. of 1 C.E.R.U. Regiment.

Note.- A verbatim extract from the Regimental books stating these convictions and dispensations with trial must be inserted.

JAM

A.F. Kent Capt.
ADJT.
1 C.E.R.U.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the Regimental books in my custody.

Signed this.....5th.....day of.....April.....1944

The above statement (with schedule of convictions and of cases in which trial has been dispensed with) is ready marked..... signed by the President, and annexed to the proceedings.

GGG-110

SPR KYLE H.W.T

Army Form A.8.

Correspondence to be PINNED here

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 17th day of February, 1944

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Engineers, on active service, that the person named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; and that it is not practicable to delay the trial for reference to a superior-qualified officer.

I hereby convene a Field General Court Martial to try the said person, and to consist of the Officers appointed or detailed hereunder.

Omit where being Officer Commanding or is of Rank.

Omit if not applicable.

*[I am unable to appoint:—

(1. Three Officers to form the Court.)

(2. A Field Officer as President.)

for the following reasons, namely:—]

PROCEEDINGS REVIEWED
12/24/44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Officers.—The names of the members of the court, their ranks, etc., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the court to be initiated by him.

President.		
Rank.	Name.	Regiment.
Major	E.A.N. Prichard	4 Fd. Coy., R.C.E.
Members.		
Rank.	Name.	Regiment.
Lieut.	J.D. Near	2 Fd. Pk. Coy., R.C.E.
Lieut.	S.C. Canyon	3 Fd. Coy., R.C.E.
Lieut.	J.A. Macdonald (Waiting)	H.Q., R.C.E.

*Signed [Signature]
Commanding Officer, [Signature]
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A-3046 Sapper Henry William Thomas KYLE 1 Cdn. Pd. Coy., R.C.E.	<u>1st. CHARGE</u> Army Act Sec. 40 (For details see charge sheet)	Not Guilty	Guilty To undergo 60 days detention at 28 Feb 43 K. P. [Signature]	Confirmed [Signature]

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :— No

(Signed) [Signature] (Signed) [Signature]
Commanding [Signature] Concerning Officer (e) [Signature] President.

- (a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column, initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary)
to be PINNED here.

I certify that the above Court assembled on the 22 and 28 Feb 44 B.
day of _____, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

- The members of the Court
- The witnesses
- ~~The interpreter~~
- ~~The officers under instruction~~

were duly sworn.

Signed this 28th day of Feb 1944.

[Signature]
President of the Court Martial.

I certify that the terms of *A.C.I. 570 of 1918 have been C.
complied with.

Signed this _____ day of _____ 19 ____

[Signature]
President of the Court Martial.

I have dealt with the findings and sentences in the manner D.
stated in the last column of the Schedule, and, subject to what Confirmation.
I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this 29 day of Feb 1944

[Signature]
Confirming Officer.

Promulgated and extracts taken in the case of A-3046 for Kyle NNT 1 Cdn Pd Coy

(a) (Dated) 1 March 1944 (Signed) [Signature]

Promulgated and extracts taken in the case of _____

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of _____

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, A-3046 Sapper Henry William Thomas KYLE, 1 Canadian Field Company, Royal Canadian Engineers, a soldier of the Canadian Army Overseas (CAF) while on active service is charged with

First Charge Conduct to the prejudice of good order and military discipline

CAF 42

in that he

in the field, on the 27 January 1944 after having been previously warned for a silent mine gapping operation in the face of the enemy, became unfit for duty by reason of previous indulgence in alcoholic stimulants.

28 January 1944
in the field

W.D. Bright
(W.D. Bright) Major, R.C.E.
Officer Commanding,
1 Cdn FC Coy, R.C.E.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

6 February 1944

K.J. Southern
(K.J. Southern) Lt-Col, R.C.E.
CRE 1 Cdn Div.

MEDICAL OFFICER'S CERTIFICATE

B A KP

I certify that A-3046 Sapper Henry William Thomas KYLE is fit to
undergo trial by Court-M_urtial.

22 February 1944.

Edin

Signature.....*Arthur J. [unclear]*.....

I certify that A3046 Sp Kyle, H.W.T. is
this day fit to undergo trial by court-
martial.

Feb 28 Feb 44

Attest Daniel Capt
no., R.C.F

Accused A 3046 Sgt Henry William Thomas KYLE 1 Riley Reg
(No.) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in Italy on 22 Feb 44
(Country) (Date)

Rank Name Unit
PRESIDENT: Major EAN PUGH 4 Riley Reg

MEMBERS: Lieut JD Year 2 Riley Reg
Lieut SC Kenyon 3 Riley Reg

JUDGE ADVOCATE: N/A
(if any)

OFFICERS UNDER INSTRUCTION: N/A

PROSECUTING OFFICER: Lieut JR DAVIS 146 Reg Lawyer? Ans No

DEFENDING OFFICER: Lieut AC BENT Lawyer? Ans No

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (RSP 17(E), 22(A)).

The President, in closed court (RP 22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (AA 49; RP 105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (RP 106).

The accused is (are) brought before the Court, and at 0920 hrs, the trial commences.

The Prosecuting Officer produces a Medical Certificate under MR (Can) 557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused: Do you object to N/A as interpreter? Ans N/A

The interpreter is duly sworn.

Do you object to N/A as shorthand writer? Ans N/A

The Shorthand Writer is duly sworn. (Forms of Oath on Page 'D')
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (RP 10)

*President to accused
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under instruction are duly sworn (RP 26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

Accused A 3046 Sgt Henry William Thomas KYLE 1 Paly RCE
 (No.) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in Tab. on 22 Feb 47
 (Country) (Date)

Major EAN RICHARD 4 Paly RCE
 Rank Name Unit
 PRESIDENT:

Lieut J.D. Year 2 Paly RCE
Lieut SC Kenyon 3 Paly RCE
 MEMBERS:

JUDGE ADVOCATE: N/A
 (if any)

OFFICERS UNDER INSTRUCTION: N/A

PROSECUTING OFFICER: Lieut J.R. Davis 1 Paly RCE Lawyer? Ans No

DEFENDING OFFICER: Lieut H.C. Bennett Lawyer? Ans No

(The following procedure must be actually carried out)

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Do you object to N/A as Shorthand Writer? Ans N/A

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 The Convening Order is read in the hearing of the accused.
 The names of the President and Members of the Court are read to the accused (RP 10)

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 Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (RP 26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (AA 46(8)).

(If special plea/s is/are made for separate trial on one or more charges (RsP 62(E), 108); or as to the jurisdiction of the Court (RP 34); or in bar of trial (RP 36); or as to accused's mental fitness to stand trial (AA 130, RP 57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each Charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (RP 112). He pleads as follows:

First Charge <u>Not Guilty</u>	Fifth Charge _____
Second Charge _____	Sixth Charge _____
Third Charge _____	Seventh Charge _____
Fourth Charge _____	Eighth Charge _____

(For procedure on alternative charges, see RP 37, fn 2)

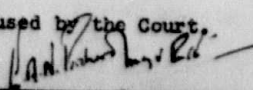
Further proceedings are recorded on pages hereto attached.

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President).

1. President to accused:
- Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (RP 39(A)). Ans No.
2. The Prosecutor's opening address (if any) (RP 39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D').
3. The Prosecution is closed. (If submission that there is no prima facie case established, see RP 40 fn 1; RP 70 fn 1).
4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (RP 40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (RP 40(D)(1)(a)).
5. President to accused:
- Q. Do you apply to give evidence yourself as a witness? Ans Yes
- Q. Do you intend to call any other witnesses in your defence? Ans Yes
- Q. Is he a witness as to character only? (RP 40(B)). Ans No
6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.
7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see RSP 40, 41 and 42).
8. The Court is now closed to consider the finding (RSP 43 and 117)
9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. (RP 117(B)).
10. Statement of Character and Service (AFB,296) and Field Conduct Sheet (MFM.6) signed in the manner required by AA 163 (1) (h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked "C", and "S", initialled by the President and attached to the proceedings (RP 46; Overseas RO 3131).
11. President to accused:
- Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (RP 46(D)). Ans Yes No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto).
12. The Court is now closed to consider the sentence (Record on Page 2 of APA.3)
(Punishments, AA 44, RR (Can) 563 - 566; one sentence only awarded, (RP 48); sentence should be dated.

The sentence is not announced to the accused by the Court.


(Signature of President)

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. RP 35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (in 3) and his plea thereto, explaining the difference in procedure by the plea (RP 37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:

Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (RP 37(B)) Ans _____

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (RP 37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (RP 37(C)). Ans _____

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination).

5. President to Accused:

Q. Do you wish to give evidence yourself or call any witnesses as to character? (RP 37(C)). Ans _____

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto).

6. Statement of Character and Service (AFB.296) and Field Conduct Sheet (MFM.6) signed in the manner required by AA 163 (1) (h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " " and " ", initialled by the President and attached to the proceedings. (RP 46; Overseas RO 3131).

7. President to accused:

Q. Do you wish to address the Court on your Statement of Character, Service and Conduct in further mitigation of punishment? (RP 46(D)). Ans _____ (No cross-examination). (Record address, if any, on separate sheet, initialled by the President and attached hereto).

8. The Court is now closed to consider sentence. (Record on Page 2 of AFA.3).

(Punishments, AA 44, ER (Can) 563 - 566; one sentence only awarded, RP 48). Sentence should be dated).

The sentence is not announced to the accused by the Court.

(Signature of President)

Evidence to prosecution.

1st witness having been duly sworn states:

Pleades NOT guilty.

1st witness having been duly sworn states: 2nd witness

It was approx 1100 hrs that morning that I was warned to have a section standing by, as from noon that same day for a silent mine gazing operation that same night.

Q. Did you call in a Group for this purpose.

A. No not in that case of the word

Q. Did you announce a time for the gathering of the party to do the job for the purpose of briefing same.

A. Yes at approx 1500 hrs that same afternoon

Q. What sect. were detailed for the job.

A. Section detailed was in charge of Sgt. Holland.

Q. Were they all present.

A. Everyone was present exception being Sgt. Mackand who was on sick parade. He was briefed when he came in approx. 1600 hrs.

Q. Was Sgt. Kyle in that sect.

A. Yes he is.

Q. What time can you tell us did you reach your destination and commence to move out to the job

A. Reach our destination at approx 1745 hrs and moved off at start of task at approx. 1800 hrs.

Q. Was the task a sweeping of a road.

A. Yes for tanks.

Q. Would you tell the story in your own words.

A. At approx 1800 hrs we started off on the task which was forward of Seaford hills covering protection provided by Seaford Platoon. Lt. Rainey of C.A.C. was in command of sentry party. As I had just started sweeping when a rifle shot sounded in the distance Lt. Rainey went off to investigate this shot and on his return informed me he had been challenged by Sgt. Kyle

Chapter 2.
Further informed me that Spz. Kyle subjected to
He asked me whether or not
My attention was then called by Lt. Rainey to the
effect that Spz. Kyle did not appear to be behaving
normally. He further stated that Spz. I immediately went
forward to investigate this complaint and found
Spz. Kyle who was acting as detector man unsteady
and his breath was a strong odor of stimulants. Considering
his unfit for the duty he was performing I immediately
had him replaced and put in charge of Lt. Spz. Hutchins
who was following at rear of party.

Q. When you approached Spz. Kyle in what position
was he from his sweeping man?

A. Spz. Kyle at the time was at the rear and slightly
to one side of his sweeper.

Q. At that stage of the operations had any mines
been discovered?

A. Up till then NO. We had however come across
one suspicious object which later proved to be other
than a mine.

Q. Do you find on such operations a state of tension
among personnel?

A. Yes to a certain extent but all was very quiet
that night and no one appeared unduly flustered.

Cross examined by defence

Q. Mr. Pons did you actually see Spz. Kyle performing
his duty as detector man?

A. That is a very hard question to answer in as much
as when in charge of the party must be observing
all his personnel and not one particular man.

Q. Would you consider it alright and well within
the bounds of safety for men to talk aloud on this
operation?

A. It would definitely be unsafe due to the proximity
of the enemy.

Q. Your contact with accused was somewhat brief
and you wouldn't have much time to investigate
would you say that the accused was under the
influence of liquor or that you simply could not take
the time that he might be or stop to investigate

Sheet 3.
In so far as investigating the complaint made to me by Lt. Paine I have already answered that question in one of my foregoing statements, in so far as forming an opinion of whether or not the accused was drunk or whether or not I had Sgt. Kyle replaced due to, as you put it, not taking a chance all apply I could neither take a chance and the odour of Sgt. Kyle's breath was unmistakably did smell of stimulant.

- Q What was Sgt. Hatch's task in this operation.
A. Lt. Paine's task was as a secondary covering party of our own.

Sgt. Hall J.H. F9/527 after being duly sworn states
Q On 27 June at approx 1500 hrs you were part of a mine sweeping operation in the face of the enemy is that so.

A Yes Sir.

Q. Will you relate in detail the incident in which the accused was involved as you know it.

A. On day & date mentioned we were all warned for a mine operation, we were warned around noon that we would be going out that night, after we arrived on this task we were sent to ~~the mine by the~~ ~~mine with the job~~. I noticed ~~that~~ ~~back~~ Sgt. Kyle came back to rear of party he was then with Sgt. Hatch's, we went along about 300 yds on our task Mr Paine came back and sent Sgt. Kyle and another Sgt back from there. I noticed Sgt. Kyle doing a lot of whispering. ~~Sgt. Hatch's~~ ~~was by this time following party~~. Then when we completed the task we went back to see P.V. then I noticed Sgt. Kyle had been drinking. His voice was slurred and in my opinion was unfit for that class of job.

Q. Was it dark.

A. Yes Sir.

Q. Could a detector man see the sweeper at 2 ft. distance

A. Yes.

Q. Look at the sweeping teams so each at a distance of 30 yds

A. On a straight stretch of road YES.

Cross examined by defense

Q. What time was the you first noticed Sp. Kyle's alleged condition.

A. After completion of task.

Q. Did you actually see Sp. Kyle performing his duty as I. M.

A. No.

Q. This party of S. Sgt Hultchris Sp. Kyle and another Sp. why were they sent back.

A. I could not say.

Q. ~~Could~~ ^{Do} you have you a Sp. MacDonald ~~in~~ ⁱⁿ section on this party.

A. Yes.

Q. What is his nature re: nerves)

A. Quite steady

F91529 Cpl. Hollands ^{U.S.} after being duly sworn states -
Q. Tell the court what you know about this case

A. On 27 Jan 64 my section, no 3 sect of #1 platoon was warned for a silent night operation. The night when my section proceeded to the 1st I started my P. parties off #1 party leading, on right of road #2 party on left of road I was with #1 party and I had to go back to #2 party had difficulties at the start. While back at #2 party thought to my attention trouble at #1 detector I then went forward and found Sp. Kyle at the wrong place at the detector. Put Sp. Kyle in his right place with the detector and went back to #2 of #3 detector and then sent Sp. Kyle back

Q. What was Sp. Kyle's position before you corrected him

A. Forward of M. P.

Q. How far forward

A. About 3 feet.

Q. Did he come back immediately

A. Yes.

Q. by Court.

Why was Sgt. Kyle sent back.

A. He was under the influence of liquor

Q. What do you base your opinion on.

A. I smell liquor on him

Q. Did Sgt. Kyle give you any reason for being forward

A. Yes for protection of sweepers.

Q. Was there an infantry covering party.

A. Yes

Cross-examined by ~~me~~

Q. What did you think when you ^{saw} Sgt. Kyle in his wrong place.

A. I thought he had made a mistake

Q. Who was the D.M. for who Sgt. Kyle was serving as mate.

A. Sgt. Mac Donald.

Q. What sort of a man is Sgt. Mac Donald

A. A good sapper.

Q. Is he inclined to be nervous

A. Yes slightly

Q. Was Sgt. Kyle armed.

A. Yes

Q. What weapon was he carrying

A. Revolver.

Q. Which revolver

A. Mine

Q. Why did you give Sgt. Ryle your revolver
 A. I did not ^{know} had a weapon, ^{at that time} so I lent him

Q. Why would he need a weapon with infantry
 covering party.

A. For his own ~~protection~~ and mines protection.

Q. What is ~~the~~ your normal position on mine sweeping
~~into~~

A. Slightly ahead of #1 detector.

Q. Are you armed

A. Yes a T.S.M.C

Q. And why do you go out in front of your party.

A. For local protection.

Q. At the time in question you were having
 trouble with #2 detector and were not in front.

A. Yes.

Q. Is it normal for your platoon to carry arms on
 mine sweeping.

A. That is normally armed

D82263 Lt Cpl. Hutchins G.V. after being duly sworn states

Q. Sgt. Ryle was placed in your charge on this night.

A. Yes.

Q. For what reason.

A. I was not informed of any reason

Q. Were you told what to do with him

A. Yes, I was told to make myself responsible for
 his actions and to keep him with mine.

Q. Who gave you these instructions

A. Mr. Parris.

Q. And so you employed him as part of your covering
 party.

A. Yes.

Sheet 7

Q Did not the instruction to make yourself professional for this man indicate to you he was not normal

A. He was sent back for some reason that would indicate that

Q You were quite close to Spc. Kyle and you judge he was fit to form part of your party.

A. Yes.

Q. Later you were sent with Spc. Kyle and another Spc. to your vehicle is that so.

A. We were given the option of remaining here or going back

Q Why were you given that option.

A. There was sufficient covering party and operations was in last stages

Q How many in your party.

A. Bren gunner myself & 2 others

Q Why didn't the Bren gunner go back with you.

A. I don't know.

Q Before you returned to vehicle was there any indication that the accused had been drinking alcoholic stimulant.

A. NO.

~~Q After returning to vehicle you saw him take~~

~~A. YES.~~

Q Objected to by Spc. Kyle.

Q After returning to vehicle can you tell us all that happened to Spc. Kyle

A. We went from the vehicle into the nearest house we had picked up. A.P. we sat in the hall and waited for remainder of party to return. We smoked several cigs and talked ~~30~~ ³⁰ minutes and ~~Spc. Kyle~~ ^{Spc. Kyle} had a drink of coffee or tea, which I refused.

Q What was the drink

17. I don't know. Sketch 28

Q Can't I determine.
Q Whose did drink come from.
A. I don't know.

Cross-examined

Q How long was Sgt. Ryb a member of your party.
A. About 3 hours.

Q How did he conduct himself while a member of your party.

A. Quite normal, except he seemed annoyed.

Q Was he talking or causing a disturbance

A. Whispering. He did not know why he was sent back. There had been a shot fired and he said that he had not fired same on questioning by me

Q Was Sgt. Ryb armed.

A. Yes.

Q All of the time he was a member of your party.

A. Yes.

Q ~~While you were proceeding back to Sgt. Ryb's stage~~ Will you tell us what happened between the time of being told you might return to the trucks and actually arriving.

A. We waited a short time truck fell close by and I decided we would be just as comfortable at the house.

Q Did Sgt. Ryb make any statement about falling truck.

A. Yes he said it was not as close as I thought. Q'd that proved to be right. We came to our own mine and Sgt. Ryb challenged the sentry to let him know who was there. We made our way through the mine and back to our vehicles.

Q Were there any other officers on this sweeping operation besides Engineer personnel, if so who were they.

Lat 9

A. I saw two men in black beret whom I judged by their trench coats to be officers no rank shown.

Q. Did you know what they were doing there as far as surveying party went?

A. No, not till afterwards.

Q. ~~Who was the 3rd?~~

What is the condition of Sgt. Mac Donald?

A. Reliable but nervous.

Question by Court.

Q. Is this Sgt. Mac Donald the original one on the mine surveying party #1.

A. ~~Yes~~ Yes he was.

The Court adjourned at 1130 hrs - until a further witness.
Lieut Rainey and myself at 1005 hrs 28 Feb 44. Some members present. etc.

Witness: Lieut L.W.P. Rainey 14 C.A.R. having been duly sworn states,

I was sent out with a Section from a Field Coy and a Platoon from the Edmonton Regt. to clear a section of the Toll road. Shortly after we had begun work there was a shot heard out on the right and I went over to investigate it. When I returned I jumped down the bank down onto the road and a Sgt. had a pistol pointed at me. I do not know whether he challenged me or not but he did say something about, "I was very lucky that he did not shoot me." I noticed at that time he had been drinking and he was very nervous and I asked that he be sent back.

Q. ^{by the court} Did you consider the accused as unfit for duty.

A. Yes I did. He was following immediately behind the sweepers. He was carrying his pistol in his hand and he was quite nervous as well as having been drinking.

Q. ^{Prosecution} Was there a silhouette of you so that he could recognise you as a British soldier.

A. I ~~do not~~ know if there was a silhouette of me on the bank. I was wearing my best other than that there were no distinguishing marks on my uniform.

Cross examined
 & by defense.

Q. Can you clarify this conversation between yourself and the accused.

A. When I was coming back I remember jumping down from the bank I heard him say I was lucky. This did not make me very happy.

Q. Who spoke first.

A. I do not remember.

Q. Did Sgt Kyle actually say you were lucky he did not shoot you.

A. No I don't think he actually said that but something about I was lucky and I do not remember the exact words after that.

Sheet 11.

- Q. Could you have identified the accused the next day.
- A. I do not think I could as it was dark and he had a caps comforter on his head.
- Q. Have you ever been called upon to identify the accused or is your witness just against a Sapper.
- A. Yes, at the summary of evidence it was asked and it was admitted by Sapper Kye that he was the person in question.
- Q. Were there any other Sps there at the time of the summary.
- A. He was the only one present.
- Q. Did you not expect to find a weapon in the sweeping party.
- A. Yes but I do not consider a pistol a proper weapon for that type of work.
- Q. Why do you consider the accused unfit.
- A. I do not think a man should be drinking before he goes out on that kind of work.
- Q. Would you say that you felt you could not afford to take the chance that this man might be unfit by reason of previous indulgence.
- A. Yes.

Q.

Sheet 12

of the case?
Q. 7 Can you clarify the statement that you ~~did~~
could not identify the accused the next day
but that you picked him out the next night.

A. I could pick him out of the party that was
working that night. I picked the man out
of a working party and showed him to his
officer.

1st witness for the defense.

Evidence for the defence.

Witness. A. 3046 Sgt. Kyle, H.H.T. having been duly sworn states.

On the 27th Jan. at approximately 1700 hours we left the camp area to go forward on a silent minesweeping patrol. I had a small bottle of whiskey which I carried along in my pocket. When we arrived at our R.V. I took a small drink from the bottle. We then proceeded down the road to commence sweeping. Shortly after we started to sweep a rifle was ~~fired~~ on our right flank. ^{It} was an Inf. patrol on that side of the road. We had proceeded 50 or 60 yds down the road when suddenly someone jumped off the bank. I pulled out my revolver I had been lent to be armed with that night and ~~it~~ stepped over towards him. Whoever it was said "what is the idea". I said "You are lucky". "The patrols know we are out here; you should not be jumping at us like that." I then returned to my place behind Sgt Mac Donald who was on the detector. We just proceeded a few feet when I saw a dark shadow on the road. I stepped around Sgt Mac Donald to investigate the shadow. Cpl. Holland came up to me then and told me to resume my place behind Sgt Mac Donald, which I did immediately.

Mr. Rowe then came up to me and told me to report to 4th Lt. Hutchins in the rear of the party. Later Mr. Rowe came back and told 4th Lt. Hutchins we could either wait on the side of the road for them to return or return to our cars. We proceeded back to our cars. We went into a house which was I believe the H.Q. for the Seaforth Highlanders. While waiting the return of the rest of the party I pulled out this bottle and had another drink. The rest of the party returned in approximately the quarter of an hour and we then returned to camp, where I was informed that I would be placed on a charge.

Q. by the defense - ~~who~~^{is} Will you present the bottle that you had that night?

A. I present this bottle as exhibit No. "10"

Q. ~~When~~^{How} ~~then~~^{and} did you know there was other personnel on the party besides Sapper?

A. I knew there was an Inf. covering party and that a Tank Officer was in charge of the tank although I had not seen him.

Q. Where did you get the bottle of whiskey?

A. It came in a Christmas parcel from my wife.

Questions by the Prosecution.

Q. On returning from this R.V. did you offer 4th Lt. Hutchins a drink from that bottle?

A. I did.

Sub 12.

Q. Why did you take some whiskey on that job.

A. It helps to steady me when I am nervous on a job like that.

Q. by the Court.

After the shot was fired did you see or know of an officer going out to investigate.

A. We did not know it.

Q. Did you have a drink in the afternoon before 1700 hours.

A. I did not.

2nd Witness, B130196 Sgt. Mac Donald 19. W. having been duly sworn states.

Q. On 27 Jan 1944 you were on a ^{mine} sweeping operation ~~in~~ ^{about} that combat.

A. Yes.

Q. Are you a member of No 1 Platoon in Cpl Holland's section.

A. Yes.

Q. What task did you have on that night.

A. Detour man.

Q. Who was your mate.

A. Sgt. Kyle.

Q. Will you relate what took place that night.

A. We arrived at R.V. and proceeded contacted the Lf. On the road we were to sweep there was a barbed wire entanglement. Sgt. Kyle my mate passed the wood back there was wire ahead with tin cans attached. He informed me he would

returned and help me through the wire with my
detector. I started sweeping just after we passed
through the wire and from then on I was occupied
with sweeping and do not remember everything
that went on. Eventually my detector quit working
I went to the rear as another man and detector
took my place.

Q. Did you consider Sgt Kyle capable of acting as your
mate,

A. To tell the truth I did not pay much attention.
I would not like to answer that question.

Q. As far as you were concerned he was all right.

A. Yes.

Question by the court.

Q. Can you clarify that last statement?

A.

Q. Did you consider Sgt Kyle as unfit for duty as
a detector mate.

A. Yes.

Q. Had you seen Sgt Kyle drinking.

A. No.

Q. In your opinion had Sgt Kyle been drinking.

A. Yes.

Q. How do you base your opinion.

A. He showed me the bottle and I smelled liquor
in his breath.

Q. By the Prosecution?

A. Had you been drinking yourself that night.

A. No.

Character Witness.

Suit Rowe: Spe Kyle has been with me ever since I came to the Platoon four or five months ago. He has always been a willing worker and a good worker. I have never had any reason for any complaint on Spe Kyle.

Just Rose recalled by the Court for further cross examination.

Q. Will you tell the court exactly why you sent Spr Kyle back.

A. The reason I sent Spr Kyle back was that in my estimation at the time I sent him back he was unfit to perform the duty at hand. I felt further that being in such a state, there was a danger not only to himself but to all the others.

Q. What do you mean by such a state.

A. Due to previous indulgence in stimulants of some sort. He was unsteady, had a strong odour on his breath.

Q. How did his condition become known to you.

A. His condition was called to my attention by Just Rainey.

Q. Have you seen Spr Kyle in a similar condition as that due to nervousness.

A. No I have never seen him in that condition due to nervousness.

Sheet 19.

Prosecution presents statements as to character taken from
the accused's records, and copy of M.F.M.

Statement in mitigation of punishment by defense.

The accused is an only son

Statements of the closing address for prosecution & defense
are appended - written by prosecutor & defense attorney.

SUMMARY FOR THE PROSECUTION

On the day and the occasion in question, we have four witnesses who were satisfied that the accused was unfit for the duty he was to perform as detector-man's mate.

Lt. Rainy was surprised upon being challenged by the accused - at the moment, thought it strange that a member of the party of which he had charge should suspect him of being the enemy, even though said member had never seen Lt. Rainy before and even though Lt. Rainy wore nothing (such a steel helmet) which would, in the darkness distinguish him immediately as a British soldier.

Lt. Howe smelled liquor on the breath of the accused and claims that the accused appeared unsteady (the latter statement not being confirmed by anyone else).

L/Sgt. Hall stated the accused was whispering unnecessarily and his breath smelled of liquor.

Cpl. Holland saw the accused ahead of the sweeper (which I consider a logical position for the sweeper's mate under the circumstances).

Therefore we have only these points from the evidence to support the allegation that the accused was unfit for his duty: 1. He challenged a figure who came upon him suddenly from the shadows; 2. He stepped ahead of his sweeper to protect him; 3. Later he was whispering unnecessarily; and 4. He appeared unsteady.

All of these actions and conditions would be accepted as normal in view of the nervous tension which Lt. Howe tells us is commonly prevalent on such jobs. But each of these witnesses has associated these actions and conditions with the fact that the breath of the accused smelled of liquor and therefore assumed that the accused was under the influence of liquor.

The prosecution cannot prove that the actions of the accused were as a result of previous indulgence in alcoholic stimulant as the charge states.

I would ask the court to consider one further point. That the accused, knowing that he was to take part in a silent minesweeping operation in face of the enemy, and knowing that liquor does have an effect upon him, carried liquor on said operation, thus endangering his life and those of his comrades as well as the success of the operation.

SUMMARY FOR DEFENCE

On the day in question the accused was worried and tired for a sleepless night's operation. Some time previous to this the accused had received a parcel from his wife in England, a small flask of whiskey. As he was a bit inclined to be nervous, he took a drink from this bottle before getting on the truck to take him to the scene of the night operation. Before leaving the truck he took a second drink, and slipped the bottle back in his pocket. He was assigned to duty as aide for Sgt. McDonald MW, who was on the detector. He very carefully helped McDonald stow an arrangement of wire with tin cans attached, and afterwards carried on with his duty to the satisfaction of his detector man. The detector was taking the full attention of Sgt. McDonald which he would have been unable to give had he been worried about his mate, as we have seen that he (Sgt. McDonald) is a slightly nervous but otherwise reliable man. A rifle shot was heard nearby and Mr. Roney who seems to have been in charge of whole operation, went off to a flant to investigate, unknown to the accused. On his return to the party, he, without warning, jumped down onto the road from the bank on the side, only to be confronted by a sapper with a pistol. He said "what's the idea?" and the sapper said "you're lucky etc." It may be that Mr. Roney did not expect to find weapons in the detector party, but Cpl. Hallana has stated that when his section operate, there is always one there, usually he himself. However at this time he had gone back to all what was wrong with one of the other detectors which was going wrong. Cpl. Hallana had previously given Sgt. Kyle a pistol for the purpose of protecting his detector man so it is not to be wondered at that he should confront the officer when surprised from the side. Mr. Roney seemed liquor and thinking the incident seemed reported it to Mr. Rome and/or Cpl. Hallana, who came along to investigate. Cpl. Hallana found the accused in front of detector man instead of behind, and thought that "he had either made a big mistake or was not seeing his head." What really happened was that the

accused saw a shadow on the sky line and thinking it might be another man, stepped forward to investigate it. It proved to be nothing, but this is why he was in front of the detector when Cpl. Halland came along. The latter too smelled liquor, and, thinking that accounted for it, re-placed him and sent him to rear. Mr. Rowe came along and said accused smelled of liquor so he too sent him to rear. He further said accused was unsteady, or seemed to be, and thus he could not afford to take any chances. Neither Mr. Rowe or Cpl. Halland had noticed Sgt. Lyle before or while performing duty so it must be assumed that he was all right, which is borne out by Sgt. MacDonald. (The rest of Mr. Lowe's evidence is hearsay as to what he was informed by Mr. Rowy). The accused was sent to the rear coming party under Lt/Cpl. Hutchin, who was not told why he was sent. So Lt/Cpl. Hutchin made him a member of his party, which duty he fulfilled quite satisfactorily for some 3 1/2 hrs. The accused was not disarmed. He was somewhat annoyed at being relieved, but otherwise conducted normal, and quite alert. This is borne out by the incidents of the mortar bombs falling nearby and the fact that on their return the accused correctly challenged the sentry. A point to note is that the party was sent to the rear because no longer required, not to take the accused back. During this whole time the Lt/CO considered the accused to be part of his party, and employed him as such. Later Lt/Cpl. Hutchin saw accused take a drink from the bottle and was offered one himself. Sgt. Hall says that he now saw the accused, who appeared to be afraid of duty, whispering and speaking "sternly" what this latter means, is, I presume, "indistinct." All whispering is apt to be indistinct, and as for whispering on a secret operation -- In any case this evidence is not about the time in question but some hours later, in contrast to the summary. The bottle is included as exhibit and was identified by MacDonald as being about the same size as one he saw Lyle with. I do not believe that this bottle holds more than three drinks, and I do not believe two of them would make accused unfit for duty thereby. There is more indication that the accused may have, possibly,

been unfit for duty by reason of nervousness (as stated by Mr. Rany) if at all. On the whole, although taking stimulants on the job is not at all commendable, the accused seems to have done his duty rather well. The only points in disagreement apart from the charge itself are

- (a) "whispering unnecessarily" (on silent operations?)
- (b) "speech slurring" (while whispering?)
- (c) "unsteady" (only one witness noticed this.)

In fact each point the two first points also were mentioned only by one witness, and that some hours later.

In closing, I fail to see how the accused could have been "unfit for duty by reason of previous indulgence in alcoholic stimulants" when he performed two different duties, each to the satisfaction of the person most closely connected with him, and one immediately following the other.

Plea in Mitigation of Punishment

The accused is an only son of parents who live in Rosenda. He joined the army on 12 Sep 39 and was in the R.C.R.s. In Dec 39 came overseas, and Dec. 40 went to Bde. as member of support platoon. On Mar. 26/41 he joined the Engos. and has been a member of 1st Fd. Coy since. He has five sisters, three of whom are in the service. His platoon officer has stated that he is an efficient sapper and has given him no cause for complaint. He has one previous conviction for this same offence and a number of short A.W.L. charges. This is his first court martial and I believe that he has indeed learned his lesson thereby. I ask for leniency on his behalf that he may continue to be the efficient sapper he was up until this time.

LIST OF WITNESSES FOR PROSECUTION

Lieut G.E. Rowe	1 Cdn Fd Coy, R.C.E.
Lieut J.W.P. Rainey	Cdn Armoured Regt.
L/Sgt J.H. Hall	1 Cdn Fd Coy, R.C.E.
Cpl W.B. Holland	1 Cdn Fd Coy, R.C.E.
L/Cpl G.W. Hutchin	1 Cdn Fd Coy, R.C.E.

LIST OF WITNESSES FOR DEFENCE

NIL

STATEMENT BY SOLDIER REGARDING DEFENCE COUNSEL

I wish to have... ~~LIEUT.~~... ~~RENT.~~..... or any officer he may
appoint defend me at my trial.

H.W. T. Kyle

(A-3046 Spr Henry William Thomas Kyle)

W. J. Ryan
- said

Summary of Evidence:
in the case of:

A3046 Apr. 1946 HWT.

All witnesses sworn as directed
by the O.G.

2nd Lt. [unclear] (3)

Question: What time did you return to camp?

Ans: Approx. 20:00 hrs.

Question: When did you return to camp?

Ans: I don't know.

Question: When did you return to camp?

Ans: I don't know.

Question: When did you return to camp?

Ans: I don't know.

Question: When did you return to camp?

Ans: I don't know.

Question: When did you return to camp?

Ans: I don't know.

[Signature]

The account, after having been confirmed in accordance with R.P. #12, (10) Do you mind to make any statement as to your conduct upon the 21st day and whether to say anything in your evidence which you would like to say that indicates you say in any evidence you give would be taken down in writing and why do you in evidence; decline to make a statement.

The account declines to make a statement

When shown by me in the Bill etc. 21st day of January 1944 in the presence of the account.

[Signature]

Summary of Evidence in the case of
#3046 Apr Hyle HWT, 1st Lt. Coy R.C.C.

1st Witness: Lieut. J. C. Rowe, 1st Lt. 1st Coy R.C.C.
(Answer) At approximately 1200 hrs. 27 Jan. 44, one of my Sec. of which Apr Hyle is a member, who warned to stand by the preparation for a silent mine lifting operation that same night. Before leaving on this operation I had no indication that Apr Hyle had been drinking. Approximately half an hour after starting the job (the time then being about 1900 hrs), my attention was directed to Apr Hyle who was unfit for the job he was required to do (Stumped mine). His breath bore a strong odour of alcoholic stimulants. I inquired into what had been replaced and put in the charge of Lt. Hutchins.

QUESTION: Who was the NCO in charge of Apr Hyle's Sec?

ANS: Lt. Holland

QUESTION: At what time was Apr Hyle's Sec. warned to stand by?

ANS: At approx 1200 hrs. At 1500 hrs, all members of this section were present for my briefing on the night operation.

J. C. Rowe Lieut.

2nd Witness: #91527 4/Plt. J. H. Hall, 1st Lt. 1st Coy R.C.C.
(Answer) At approximately 1800 hrs, 27 Jan. 44, Apr Hyle who is in my section was under the influence of liquor.

QUESTION: What leads you to think that Apr Hyle was under the influence of liquor?

ANS: His speech was thick and he was idling unnecessarily.

QUESTION: How long had your sec. been on the job before you discovered Apr Hyle's alleged condition?

ANS: The work had commenced. I do not know exactly how long we had been working before I noticed Apr Hyle.

QUESTION: Was it important that the mine be silent on this operation?

ANS: Yes.

John H. Hall (4/1/44)

(2)

3rd Witness #91529 Gpl. Holland W. B. 1st Lt. (Sworn) At approximately 1200 hrs. 27 Jan 44 when my Section (N's) had just commenced mine sweeping on a road, Apr. Byle who is in my Sec. was pointed out to me by an Officer of the Tank Corps. I went to my M's detector team and found that Apr. Byle was in front of instead of behind the detector man. I told him to come back to his proper position and went back myself to have him replaced.

QUESTION: What did you think when you saw Apr. Byle ahead of his detector man.

ANS: The man had either made a big mistake or he wasn't very bright.

QUESTION: Was Apr. Byle under the influence of

ANS: Yes

QUESTION: What makes you think so.

ANS: By the smell of his breath and judging from the fact that he was in front of the detector man.

W. B. Holland CPL

4th Witness D82263 1st Gpl. Hutchins G. W. 1st Lt. (Sworn) At approximately 1830 hrs. 27 Jan. 44 during a silent mine sweeping operation, Apr. Byle, who is in my Sec. (N's) was placed under my care and I also made responsible for him. He took up a position near me as part of the covering party of which I had charge.

QUESTION: How did Apr. Byle conduct himself while in your charge.

ANS: Normally. He was as the rest of us.

QUESTION: Was he talking or making any noise.

ANS: He was whispering due to his annoyance at being brought back.

QUESTION: During the time he was in your charge, was there anything about his actions which would indicate to you that he was under the influence of liquor?

ANS: NO.

QUESTION FROM ACCUSED: How long was I in your care.

ANS: Approx. 3 1/2 hrs.

QUESTION FROM ACCUSED: Did you see me take a drink during the time I was in your charge.

ANS: Yes. After we had returned to our vehicles.

QUESTION: How long were you at the vehicles waiting to return home?

ANS: About 1/2 hour.

270

summary of evidence in the case of A-3-046 Sapper KYLE, R.W.T.

1st Witness Lieut G.E. Rowe having been duly sworn states:-

At approximately 1800 hours 27 Jan 44, one of my section, of which Spr Kyle is a member, was warned to stand by in preparation for a silent mine lifting operation that same night. Before leaving on this operation I had no indication that Spr Kyle had been drinking. Approximately half an hour after starting the job (the time then being 1900 hours) my attention was directed to Spr Kyle who was unfit to do the job he was required to do (sweepers mate). His breath bore a strong odour of alcoholic stimulants. I immediately had him replaced and put in charge of 1/Cpl Hutchin.

Question Who was the N.C.O. i/o of Spr Kyles section.

Answer Cpl Hollands

Question At what time was Spr Kyles section warned to stand by.

Answer At approx; 18 00 hours. At 1800 hours all members of this section were present at my briefing on the nights operation.
SIGNED G.E. ROWE, Lieut, R.C.E.

2nd witness P-91527 1/Sgt Hall, J.H., 1 Pd Coy, R.C.E. having been duly sworn states:

At approximately 1800 hours 27 January 1944 Spr Kyle who is in my section was under the influence of liquor.

Question What leads you to think that Spr Kyle was under the influence of liquor.

Answer His speech was thick and he was whispering unnecessarily.

Question How long had your section been on the job before you discovered that Spr Kyles alleged condition.

Answer The work had commenced. I do not know exactly how long we had been working before I noticed Spr Kyle.

Question Was it important that the men be silent on this operation.

Answer Yes.

Signed John H. Hall, 1/Sgt

3rd Witness P-91529 Cpl Holland, W.B. 1 Pd Coy, R.C.E. having been duly sworn states:

At approximately 1800 hours 27 January 1944 when my section (No.3) had just commenced mine sweeping on a road, Spr Kyle who is in my section was pointed out to me by an officer of the Tanks Corps. I went to my No.1 detector team and found that Spr Kyle was in front of instead of behind the detector man. I told him to come back to his proper position and went back myself to have him replaced.

Question What did you think when you saw Spr Kyle ahead of his detector man.

Answer The man had either made a big mistake or that he was not using his head.

Question Was Spr Kyle under the influence of liquor

Answer Yes

Question What makes you think so

Answer By the smell of his breath and judging from the fact that he was in front of his detector man.

Signed W.B. Holland, Cpl.

*Certified True Copy
6 Feb 44
R.H. Coors Capt*

4th Witness DB2865 L/Cpl Hutchin, G.W., 1 Pk Coy, R.C.E., having been duly sworn states:

At approximately 1830 hours 27 January 1944 during a mine sweeping operation Spr Kyle who is in my section, was placed under my care and I was made responsible for him. He took up a position near me as part of a covering party of which I had charge.

Question ~~Normally~~ How did Spr Kyle conduct himself while in your charge.

Answer Normally, the same as the rest of us.

Question Was he talking or causing any noise.

Answer He was whispering due to the annoyance of being brought back.

Question During the time he was in your charge, was there anything about his actions which would indicate that he was under the influence of liquor.

Answer No.

Question from Accused How long was I in your care.

Answer Approx. 3 1/2 hours.

Question from accused Did you see me take a drink during the time I was in your charge.

Answer Yes, after we had returned to our vehicles.

Question How long were you at the vehicles awaiting to return home.

Answer About 2 hours

Question What time did you return to camp.

Answer Approx 2245 hours.

signed G.W. Hutchin L/Cpl.

5th Witness Lieut J.W.P. Rainey 14th C.A.R. having been duly sworn states:-

At approx 1900 hours 27th January 1944 I was directing a mine sweeping party of the 1 Cdn Pk Coy, R.C.E. on the TOLLO Rd. The operation was withing small arms range of the enemy. I was out ahead of the party investigating a rifle shot which had been heard on the right flank. On returning to the head of the mine sweeping party one of the men confronted me with a pistol at approx 5' range.

Question What word passed between you on that encounter.

Answer Approximately true of what was said is as follows:

I said "whats the idea" Spr Kyle said "you're lucky"

"They know we are out"

Question What position was Spr Kyle from the sweeper when you encountered.

Answer I don't know.

Question Was it dark.

Answer Yes, there was no moon and we were in a cutting.

Question Had you ever seen Kyle before

Answer No.

Question What did you do following the encounter

Answer I went to the rear of the party and found Lieut Rowe.

Question Was there any indication that the accused had been drinking.

Answer Yes, his breath smelled of some sort of alcoholic stimulant

Signed J.W.P. Rainey, Lieut.

The accused after having cautioned in accordance with R.P. 4(e) i.e. "do you wish to make any statement or to give evidence under oath" "You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence."

Taken down by me in the field this 31 day of January 1944 in the presence of the accused. Rules of Procedure 4 C.A.R. complied with

Signed Johnny R Davis, Lieut R.C.E.
1 Pk Coy, R.C.E.

*Corrected from original
27/1/44*

Summary of evidence in the case of A-3-046 Sapper KYLE, R.W.F.

1st Witness Lieut G.E. Rowe having been duly sworn states:-

At approximately 1200 hours 27 Jan 44, one of my section, of which Spr Kyle is a member, was warned to stand by in preparation for a silent mine lifting operation that same night. Before leaving on this operation I had no indication that Spr Kyle had been drinking. Approximately half an hour after starting the job (the time then being 1900 hours) my attention was directed to Spr Kyle who was unfit to do the job he was required to do (sweepers mate). His breath bore a strong odour of alcoholic stimulants. I immediately had him replaced and put in charge of L/Cpl Hutchin.

Question Who was the N.C.O. i/c of Spr Kyles section.

Answer Cpl Hollands

Question At what time was Spr Kyles section warned to stand by.

Answer At approx; 12 00 hours. At 1500 hours all members of this section were present at my briefing on the nights operation.
SIGNED G.E. ROWE, Lieut, R.C.E.

2nd witness F-91527 L/Sgt Hall, J.E., 1 Fd Coy, R.C.E. having been duly sworn states:

At approximately 1800 hours 27 January 1944 Spr Kyle who is in my section was under the influence of liquor.

Question What leads you to think that Spr Kyle was under the influence of liquor.

Answer ~~XXXXXXXXXXXXXXXXXXXX~~ His speech was thick and he was whispering unnecessarily.

Question How long had your section been on the job before you discovered that Spr Kyles alleged condition.

Answer The work had commenced. I do not know exactly how long we had been working before I noticed Spr Kyle.

Question Was it important that the men be silent on this operation.

Answer Yes.

Signed John H. Hall, L/Sgt

3rd Witness F-91529 Cpl Holland, W.B. 1 Fd Coy, R.C.E. having been duly sworn states:

At approximately 1800 hours 27 January 1944 when my section (No.3) had just commenced mine sweeping on a road, Spr Kyle who is in my section was pointed out to me by an officer of the Tanks Corps. I went to my No.1 detector team and found that Spr Kyle was in front of instead of behind the detector man. I told him to come back to his proper position and went back myself to have him replaced.

Question What did you think when you saw Spr Kyle ahead of his detector man.

Answer The man had either made a big mistake or that he was not using his head.

Question Was Spr Kyle under the influence of liquor

Answer Yes

Question What makes you think so

Answer By the smell of his breath and judging from the fact that he was in front of his detector man.

Signed W.B. Holland, Cpl.

*Confidential - Security Copy
6 Feb 45
R.C.E. Copy*

4th Witness D82263 L/Cpl Hutchin, G.W., 1 Pd Coy, R.C.E., having been duly sworn states:

At approximately 1830 hours 27 January 1944 during a silent mine sweeping operation Spr Kyle who is in my section, was placed under my care and I was made responsible for him. He took up a position near me as part of a covering party of which I had charge.

Question ~~XXXXXXXX~~ How did Spr Kyle conduct himself while in your charge.

Answer Normally, the same as the rest of us.

Question Was he talking or causing any noise.

Answer He was whispering due to ~~the~~ annoyance of being brought ⁱⁿ back.

Question During the time he was in your charge, was there anything about his actions which would indicate that he was under the influence of liquor.

Answer No.

Question from Accused How long was I in your care.

Answer. Approx. 3 1/2 hours.

Question from accused Did you see me take a drink during the time I was in your charge.

Answer Yes, after we had returned to our vehicles.

Question How long were you at the vehicles awaiting to return home.

Answer About 2 hour

Question What time did you return to camp.

Answer Approx 2245 hours.

Signed G.W. Hutchin L/Cpl.

5th Witness Lieut J.W.P. Rainey 14th C.A.R. having been duly sworn states:-

At approx 1900 hours 27th January 1944 I was directing a mine sweeping party of the 1 Cdn Pd Coy, R.C.E. on the TOLLO Rd. The operation was with small arms range of the enemy. I was out ahead of the party investigating a rifle shot which had been heard on the right flank. On returning to the head of the mine sweeping party one of the men confronted me with a pistol at approx 5' range.

Question What word passed between you on that encounter.

Answer Approximately true of what was said is as follows:
I said "whats the idea" Spr Kyle said "you're lucky"
"they know we are out"

Question What position was Spr Kyle from the sweeper when you encountered.

Answer I don't know.

Question Was it dark.

Answer Yes, there was no moon and we were in a cutting.

Question Had you ever seen Kyle before

Answer No.

Question What did you do following the encounter

Answer I went to the rear of the party and found Lieut Rowe.

Question Was there any indication that the accused had been drinking

Answer Yes, his breath smelled of some sort of alcoholic stimulant

Signed J.W.P. Rainey, Lieut.

The accused after having cautioned in accordance with R.F. 4(e) i.e. "Do you wish to make any statement or to give evidence under oath" "You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence" declines to make a statement.

Taken down by me in the Field this 31 day of January 1944 in the presence of the accused. Rules of Procedure 4 c,d,e, complied with

Signed Johnny R Davis, Lieut R.C.E.
1 Pd Coy, R.C.E.

*Received by
6 Feb 1944*

CERTIFIED TRUE COPY

Army Form B.122

No. ACC96 Name Kyle, H.W., Jr.
 Date of last entry in Company Conduct Sheet }
 No. and date of last drunk }
 Sig. Barry, J. Ed. Corp. H.C.C. Co. or Company Coy
 G.C. Badges }

Date of () 12 Sep 39
 Signature O.C. ()
 Company, etc. ()

Sheet No. TWO

Place	Date of offence	Rank	Case of Drunkness	Offence	Number of Witnesses	Punishment Awarded	Date of awarding of medal with trial	By whom awarded	Remarks
Field	15 Nov 40	Plt	(1) AALD(1) AWL from 1430 hrs to 14 Nov 40 to 15 Nov 40 (1dhrs 30 mins)		Sgt Cpl Bristow	72 hrs Letn	15 Nov 40	Maj. Snow	Forf 3 days
			(2) AWL from 0830 hrs to 10 Nov 40 to 1200 hrs to 10 Nov 40 (2 hrs 30 mins)		Sgt Kerton	10 days F.P.	6 Jan 41	Maj. MacDonald	Forf 3 days pay
Field	31 Dec 40	Plt	(3) hrs 30 mins AALD(1) AWL from 2309 hrs to 00 Dec 40 to 1100 hrs E. Jan 41 (70 hrs 30 mins)		L/C Colwill	14 days F.P.	8 Feb 41	Maj. MacDonald	Forf. 2 days pay
Field	1 Feb 41	Plt	AALD(1) AWL from 0645 hrs to 1 Feb 41 to 2515 hrs E Feb 41 (40 hrs 30 mins)		Sgt Brown	Forf 4 days	25 May 41	Maj. H.L. Meuser	Forf 3 days F.P. 149(1)(a)
Field	19 May 41	Sgt	AALD(1) AWL from 2030 hrs to 19 May 41 until 0630 hrs E May 41 absent 2 days 10 hrs			Forf 149(1)(e)	41		

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16 Sep 41	SPF		AA10(1) AWL from 1330 hrs 16 Sep 41 until 22 15 hrs 16 Sep 41 (8 hrs 45 mins)	Sgt Warren	14 days CB	17 Sep 41	Maj A.L. Tregillus	For 1 days pay FR&I 149 (1)(a)
Field	13 Nov 41	SPF	/	AA 19 Drunkenness AA10(4) Breaking out of barr racks whilst under open arrest AA10(1) AWL from 0700 hrs 14 Nov 41 to 0730 hrs 17 Nov 41 (3 days 30 mins)	CSM Laurie Sgt Warren	14 days P.F.	17 Nov 41	Maj. A.L. Tregillus	For 16 days pay FR&I 149(1)(b) For 4 days FR&I 149(1)(a)
Field	17 Feb 42	SPF		AA40 Making false statement and produced false statement well knowing the above statement to be false	Lt JE Murray CSM Laurie	21 days P.F.	18 Feb 42	Maj. A.L. Tregillus	For 21 days pay FR&I 149 (1)(b)
Field	10 Mar 42	SPF		AA10(4) Breaking out of barracks while under open arrest AA10(3) Resisting arrest AA 19 Drunkenness	Cpl Blacklock CSM Laurie	10 days P.F. 10 days P.F. FR&I 149(1)(c)	12 Mar 42	Maj. E.J. Durnin	For 10 days pay FR&I 149 (1)(b) Total for 21 days pay

Place	Date of offence	Rank	Cases of Desertion	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Carried TRUE Copy.					
				In the field 6 Feb 44	RC West Coast W. Knight Thair				
							5 February 1944		

Statement as to Character and Particulars of Service of Accused.

Number. A 3046. Rank. Spr. Name. HENRY WILLIAM THOMAS KYLE Regiment (or as the case may be). 1 Fd Coy RCE.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—As a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheets mentioned should be produced in court with this statement but not appended to its proceedings.

The para. 677, R.E., 1910.

* The conduct sheets should correspond with the number of entries in the conduct sheets, promissory being given to the court without offence in each entry, and being promissory special sets of gallantry or distinguished conduct.

† Indentation if the charge is for drunkenness the entries for conduct sheets should be stated separately and dated.

* Within last 12 months.

* Since Enlistment.

For	<u>ABSENT WITHOUT LEAVE AA 15. TRIO</u>	times	<u>ELEVEN</u>	times.
For	<u>A.A. 10(4)</u>	Nil.	times	<u>TWO</u> times.
For	<u>AA 10(3)</u>	Nil	time	<u>ONE</u> times.
For	<u>AA 40</u>	ONE	times	<u>TWO</u> times.
For	<u>DRUNKENNESS AA. 19. 13 NOV 1942</u>			times.
For	<u>" AA 19. 10 MAR 1942</u>			times.

Number of instances of gallantry or distinguished conduct.
 or
 There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or N/A.
 Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or The accused at the present time is under sentence for
N/A. beginning on the N/A day of N/A.

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 0 days in military custody, making a total of 0 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service is 34 YEARS.
attestation paper

6. The date of his record of service specified in his attestation paper is 12 SEPT 1939.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 YEARS 3 MONTHS

8. The accused is entitled to deferred pay or gratuity in respect of 4 YEARS 3 MONTHS service.

9. The accused is entitled to reckon 4 YEARS 3 MONTHS service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or reward)). N/A.

11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A.

12. (In the case of an officer.) The accused holds in the army the rank of N/A, dated _____, and in his regiment (or corps or department) the rank of _____ dated _____.

647
Sgt. Lytle, R. B.

O. H. M. S.

Use this side

M. F. B. 270
MFG. 12-40 19008-00-70
MFG. 1773-33-47

64N 10

Army Form A.3.

**Form for Assembly and Proceedings of Field
General Court Martial on Active Service.**

PROCEEDINGS.

A.

On Active Service, this 27th day of August, 1943

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial in reference to a superior qualified officer~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable

~~(I am unable to appoint—)~~

~~(1. Three Officers to form the Court)~~

~~(2. A Field Officer as President)~~

~~(of the following reasons, namely:—)~~

PROCEEDINGS REVIEWED

*Reviewed by
Major G. H. H. H. H.
19 Sept 43*

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may also be named. In the latter event, the ranks, names, etc., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialed by him.

President.		
Rank.	Name.	Regiment.
Major	F. J. GILMOUR	R.C.A.
Members.		
Rank.	Name.	Regiment.
Major	A. J. A. BAXTER (S.E.M. & S. R.)	H.Q., C.R.U.
Lieutenant	C. M. G. ARTHUR (C & Y B)	H.Q., C.R.U.

Signed *J.M. McLean* Brigadier
Commanding Cdn Reinforcement Units.
Convening Officer.

4/11/43

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M-10515				
SGT. KYLLO, Robert, Bernard	First Charge	Guilty	Guilty	Confirmed J. H. Williams Brig
Cdn Detention Barracks.	A.A. sec 15(1)	Guilty	Guilty	
	Second Charge			
	A.A. sec 11		To be reduced to the ranks and to undergo detention for 6 months.	
			1/9/42 J.H.W.	
				See charge sheet attached.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :-

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary) :-

(Signed)

Brigadier (Signed)
Commanding Cdn Reinf Units.
Concerning Officer (e)

J. H. Williams
RCA
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary)
to be PINNED here.

I certify that the above Court assembled on the 1st day of September 1942 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. B. Certificate of President as to proceedings.

I also certify that :-

1. The members of the Court
2. The witnesses
- * (3. ~~The interpreter~~)
- * (4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 1st day of September 1942.

J. H. Williams
President of the Court Martial.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. C. Certificate in case of death sentences.

Signed this 7th day of September 1942.

J. H. Williams
President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. D. Confirmatory

~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 2nd day of Sept 1942

J. H. Williams
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 5 SEP 1942 (Signed) J. H. Williams MAJOR, COMMANDANT, MILITARY PRISON AND DETENTION BARRACK.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

"B"

H. C. C. H. Jones

The accused, M-10515 Sgt. Kylio, Robert, Bernard, Cdn Detention Barracks, Cdn Provost Corps, a soldier of the Canadian Army Overseas, is charged with:-

CHARGE No. 1

AA SEC 15 (1)

While on Active Service, Absenting Himself Without Leave,

in that he,

Was absent without leave from Cdn Detention Barracks from 2359 hrs 11 Aug 42 until he surrendered to the Cdn Provost Corps at Cove, Hants., at 2210 hrs 15 Aug 42.

(Absent 3 days, 22 hours and 11 minutes).

CHARGE No. 2

AA SEC 11

When on Active Service, Neglecting to Obey Overseas R.O. 960

in that he,

between the 1st day of March 1942 and the 15th day of August 1942 did, in the United Kingdom, dispose of cigarettes on a commercial or barter basis to civilian persons, said cigarettes having entered the United Kingdom free of duty as a gift to him.

Headley Downs, Hants
14 Aug 42.

W. Dick
Major
Commandant
Canadian Detention Barracks.

To be tried by Field General Court Martial

J. M. Phelan
Commanding Cdn Reinforcement Units,
Convening Officer

Farnborough, Hants
This 27th day of Aug 42.

'A' *H. Gilmour*
Major

MEDICAL OFFICER'S REPORT

I certify that No. M10515 Sgt. Kylo R.B.
of Cdn. Detn. Bks. is in a good state of health,
and fit to undergo Court-martial

R.M. Ties

Medical officer
CANADIAN DETENTION BARRACKS

Station Cdn. Detn. Bks.

Date September 1, 1942.

27th
11/11/42
Provo

SUMMARY OF EVIDENCE IN THE CASE OF : REGTL.NO.M10515 SERGEANT KYLLO, Robert Bernard, Cdn.Provost Corps on strength of Cdn. Detention Barracks, a soldier of the Cdn.Army Overseas.

By direction of the Commandant the Summary of Evidence is taken on oath.

Charge No.1

FIRST WITNESS

For the Prosecution. Regtl.No.C11721 Sgt.Amyott, W.F., Cdn.Detention Barracks, a soldier of the Cdn.Army Overseas, having been duly sworn states as follows:

Sir, the duties of the Orderly Sgt. are to check the billets every night. On the 11th.-12th.-13th.-14th. till 16th. I checked the billets and found that Sgt.Kyllo was absent during that period of time, absent from 2359 hrs. on the 11th.Aug 42.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

Sgt.
(W.F.Amyott) C11721

W.F.Amyott C11721

SECOND WITNESS

For the Prosecution. Regtl.No.C30273 A/Cpl.Richmond, E.C. of Cdn.Provost Corps, stationed at Morval Barracks, Cove Hants., a soldier of the Cdn.Army Overseas.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence.

Having regard to Sgt.Kyllo giving himself up to Cdn.Provost Corps at Morval Barracks.

Attendance of this witness cannot, in my opinion, be readily procured.

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS EXAMINATION.

J.R.Gauthier Lieut.
(J.R.Gauthier)
Officer Taking Summary

THIRD WITNESS

For the Prosecution Regtl.No.C30106 S/Sgt.Fouchard, T., Cdn.Detention Barracks, a soldier of the Cdn.Army Overseas, having been duly sworn states as follows:

Sir, at about 1130 hrs. 16 Aug 42 I was on duty at the gate of the Detention Barracks when the Provost turned over to me Sgt.Kyllo who gave himself up to the Provost Coy. at Cove. He was sober and properly dressed, and then I placed him under close arrest. Date 16th. of August 1942.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

T.Fouchard S/Sgt.
(T.Fouchard) C30106

Charge No.2

FIRST WITNESS

For the Prosecution Regtl.No.C7259 L/Cpl.McQuarrie, J.W.S., Cdn.Detention Barracks, Post Office Orderly, a soldier of the Cdn.Army Overseas, having been duly sworn states as follows:

Sir, I was taking the count from 26th.Jul 1941 to 18th.June 1942 and found that there was 14,500 cigarettes received by Sgt.Kyllo. The accused signed for every box he received.

The accused declines to cross examine this witness.

J.W.S.McQuarrie L/Cpl.
(J.W.S.McQuarrie) C7259

Dispatches and also book showing amount of cigarettes and signatures of the accused produced before the court.

SECOND WITNESS

For the
Prosecution.

Lieut. A. J. Gillis, Cdn. Provost Corps, an Officer of the Cdn. Army Overseas, having been duly sworn, states as follows: Sir, on the 3rd. August 1942 I received a telephone call from Capt. Wood, Asst. Commandant of Cdn. Detention Barracks to the effect that a letter had been intercepted by the Censor Board and contained an extract that required an investigation. I patrolled to the Cdn. Detention Barracks and was handed a file which is attached. Sgt. Kylo's letter addressed to Mrs R. B. Kylo, Suite 20, Healy Apts. Calgary Alta. The extract that the censor sent to us is followed:- "Of course I dont get all you send, If I did we'd be a lot better off. I cant figure why I dont get them. I think it will work a lot better if you split it up and send three to each company each month. I should get the most of them that way and we can use them. I'm going to check up on each shipment from now on and find out why I dont get them. If you send six each month as I told you there should be at least five or four at the worst of times. I've tried to tell you before and I want you to keep it under your hat, I get \$20.00 each. Just figure it out and you can see that we are fairly well off if you just do what you're told. I want you to follow instructions."

I checked with the Cpl. Postal Orderly of the Detention Barracks and found that up until June 1942, Sgt. Kylo had not received an excessive quantity of cigarettes. On 5th. Aug 42 I interviewed Sgt. Kylo in the presence of Sgt. Johnson of the S.I.S., Cdn. Provost Corps and he admitted selling three lots of Canadian cigarettes. I again saw Sgt. Kylo on the 6th. Aug 42 in the presence of Sgt. Johnson and he handed me this statement which I wish to introduce before the Court; this statement was written by himself. Before accepting the statement I inserted the following warning: "I fully understand that I do not have to make the statement unless I wish to do so, and that it may be used as evidence against me" and then had him sign the warning.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

A. J. Gillis
(A. J. Gillis)

Lieut.

THIRD WITNESS

FOR THE
PROSECUTION.

Regtl. No. K85437 Sgt. Johnson, S.L., Cdn. Provost Corps, a soldier of the Cdn. Army Overseas, having been duly sworn states as follows:

Sir, I wish to corroborate Lieut. Gillis' statement. That statement was read to me before the Court and I wish to add. While talking to Sgt. Kylo he informed me that he had been in financial difficulties with a woman which it caused him to turn over cigarettes in return for re-payment. I found that woman to be Mrs W. Josephs, 57 High St. Guildford. I proceeded to Guildford in company of Lieut. Gillis and took a statement from Mrs Josephs which I present.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

S. L. Johnson
(S. L. Johnson) K85437

Sgt.

FOURTH WITNESS
For the
Prosecution.

Mrs W.J.W.Josephs, 57 High Street, Guildford, Surrey,
having been duly sworn states as follows:

Sir, about 3 months ago that Bob came to me with some cigarettes which I understood were his own. I secured one box of cigarettes and gave him in return £3-15-0 and on another occasion I received loose cigarettes and gave him £2-0-0. I identify the accused, Sgt. Kylo, to be the Bob who sold those cigarettes to me.

Cross Examined by the Accused:

- Q. 1 Have you been led to believe by anybody that these cigarettes were not mine?
- A. 1 I quite think that they were yours.

Sgt *W. Josephs*
Mrs. J.W. Josephs.

Accused having been duly cautioned as follows:

"Do you wish to make any statement or give any evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence" stated that he did not wish to say anything.

J.R. Gauthier Lieut.
(J.R.Gauthier)
Officer Taking Summary.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused, and that Rules of Procedure 4(c),(d),(e),(f) and (g) have been complied with.

Headley Down, Hants.,
20 Aug 42

J.R. Gauthier Lieut.
(J.R.Gauthier)
Officer Taking Summary.

FIFTH WITNESS

For the
Prosecution

Regtl.No.C41995 S/Sgt.Durfy, R.H., on strength of Cdn. Detention Barracks, a soldier of the Cdn.Army.Overseas, having been duly sworn, states as follows:

Sir, I produce here Cdn.Detention Barracks Part 1 Order No.61 dated 24 Sep 41. Para 4 deals with Overseas R.O. No.960 concerning the illegal sale of gifts from Canada. This is a certified copy of the original on file at this Unit.

R.H. Durfy S/Sgt.
(R.H.Durfy) C41995

THE ACCUSED DECLINES TO CROSS EXAMINE THE WITNESS AND MAKES THE FOLLOWING STATEMENT:

"I never questioned the publishing of that Order."

A. B. Kylo Sgt.
(A.B.Kylo) M10505

Taken down by me in the presence and hearing of the accused.

Headley Down, Hants.,
26 Aug 42

J.R. Gauthier Lieut.
(J.R.Gauthier)
Officer Taking Summary.

*Produced as exhibit at the
Summary of Evidence, this date
26 Aug. 41.*
*J.P. Kautsky, Senior
Officer in Charge, Summary*

CANADIAN DETENTION BARRACKS
PART ONE ORDERS

J.P. Kautsky
N.o. 61
24 Sept. 41

Issued by
MAJOR G.W. BALL COMMANDANT.

1. ECONOMY IN THE USE OF PETROL & OIL:-

- (1) Strict economy in the use of petrol and oil during the war is of the utmost importance. This fact will constantly be impressed on all ranks.
- (2) The following points will be watched and checked by all formations the commanding officer and the most junior commander.
 - a. Rigid control of transport will be carried out to ensure that no unnecessary trip is made by a vehicle or vehicles. The most suitable type of vehicle should be used commensurate with the load it is to carry.
 - b. The minimum amount of transport should be used for personnel and then only on essential military duties, except as laid down in para. 9, section 1 of "Regulations regarding the Employment, Control, Marking and Lighting of Canadian military vehicles".
 - c. Daily Work Tickets, (A.F.G. 3518) and Log Book A.B. 412 will be used for each vehicle and checked carefully.
 - d. No vehicle should travel at any time at an excessive rate of speed because of increased petrol consumption.
 - e. All vehicles engine should be turned off even during the shortest halt.
 - f. All vehicles showing an abnormal consumption of petrol or oil will immediately be inspected for mechanical defect and corrected.
 - g. Carelessness in refuelling petrol tanks should be avoided. No tanks should be filled to over-flowing, and in cases where difficulty is experienced in putting petrol in the filler pipe, funnels or flexible armored hoses should be used.
 - h. No petrol should be carried in containers of any kind that are considered leakers. At the same time any container carrying petrol should be well stoppered.
 - i. Safe custody of petrol on the charge of the unit is of utmost importance. Petrol stores should be securely locked, or guarded and the accounting instructions followed.
 - j. No spare tins will be carried on unit vehicles except in cases of emergency and long journeys or on schemes when authorized. (Cdn. Army Routine Order (OS) 935 d/29-8-42.

2. IDENTITY CARDS? CIVIL POLICE:-

When checking the identity of civil police, in addition to the police warrant card the civil identity card bearing the photograph and official stamp will be asked for. This latter is the only satisfactory proof of identity. (C.A. O.R.O. 936 d/3-9-41).

3. DISCLOSURE OF MILITARY INFORMATION IN CORRESPONDENCE WITH COMMERCIAL FIRMS:-

Military information which might be of assistance to the enemy is being disclosed by members of the army when writing on behalf of messes, canteens, institutes, confectionery, etc. to wholesalers and retailers of tobacco, beer and other commodities.

O.C.s will, therefore, ensure that those responsible for ordering s
Page two follows.

such commodities refrain from any specific mention of a change of location or a material change in the strength of any unit or units. Where it must be obvious from the nature of the order that any such change is taking place, or has taken place, the order will be sent under confidential cover and the use of the telephone will be avoided. Attention is directed to Routine Order (O) No. 452 (Cdn. Army R.O. 951 d/10 Sept. 41)

4. ILLEGAL SALE OF GIFTS FROM CANADA:-

Attention is directed to Routine Order (Overseas) No. 635 and the instruction therein that Officers commanding will see that appropriate disciplinary action is taken immediately any cases are reported or come to their notice of the sale by personnel of the Canadian Army of gifts, particularly cigarettes and tobacco, which have entered the United Kingdom free of duty.

Disciplinary action should be taken promptly in all cases. To facilitate proof and in order that a charge may be laid under Army Act. Sec. 11, the following special order is made:

The sale or any disposal on a commercial or barter basis, in the United Kingdom by military personnel to other military personnel or a civilian person or corporation, of any gift, or gifts to an officer ~~or soldier~~ of the Canadian Army or for distribution to the personnel of a Unit of the Canadian Army, which have entered or are commonly known to enter, the United Kingdom free of duty is hereby forbidden.

5. RAILWAY TRAVEL IRREGULARITIES:-

Cases are multiplying of travelling irregularities among soldiers sufficiently serious to warrant bringing offenders before civil courts. Hitherto, railway companies have satisfied to collect the appropriate fares, but as offences become increasingly troublesome, more drastic measures appear necessary. No action has yet been taken against Canadian troops as it is hoped that control by military ~~authorities~~ authority will be sufficient.

Railway regulations governing passenger have the force of law and must be strictly observed by military personnel.

The use of out of date tickets is expressly forbidden.

All ranks are warned that it is a punishable offence to mutilate railway tickets, or tamper with them in any way so as to obscure dates, destinations, or other information printed thereon.

Military warrants and tickets issued to individuals in exchange therefore, are non-transferable and the use of transportation covered by such warrants, or tickets by persons other than named in the official return of the issuing authority is a punishable offence.

All ranks are to observe that railway officials in the execution of their duty are vested with police authority. Demands for tickets and information relating thereto must be satisfied.

Offences relating to military warrants of tickets obtained by warrants are punishable under A.A. Sec. 40 (Cdn. Army (O) Routine Order No. 982, d/15-9-41.)

6. VEHICLES -- CONVEYANCE OF TROOPS: -

Routine Order (O) No. 905 is amended as follows: Add the following paragraphs:-

"5. It is forbidden for more than two persons (including the driver) to ride in the cab of a vehicle, or for any person to ride on the running board of the vehicle.

"6 O.C.s will take necessary action to ensure compliance by all

military personnel.

"7. The substance of this order will be republished every three months. (Cdn. Army O.R.O. No. 1013, d/19-9-41).

7. WEEKEND LEAVE - LONDON:-

Due to the severe shortage of hostel accommodations in the London area and the very large number of Canadians coming to London on weekend leave, it has been found necessary to take steps to relieve the situation.

It is being arranged that the Cdn. Corps will only permit half its units to proceed to London on weekend leave each week, and formation is to do the same.

In view of the above, the following procedure will be carried out. "A" group and "C" group may permit O.R.s to proceed to London on weekend leave on the weekend Sunday, 21 Sept. 41 and each alternate weekend thereafter, that is 5 Oct. 19 Oct. etc. All other units under comd. C.B.U. and those for local administration only, may proceed on the 26th. Sept. 41, and each alternate weekend thereafter, that is Oct 12th. and Oct. 26th. etc.

Any soldier found in London on other than those weekends to which his unit is entitled, as above, will be liable to arrest, and returned to their Units as misusing their passes, or A.W.L. (Priv. Leave exempted).

If it is found that soldiers are obtaining passes for places near London, and proceeding to London, and thus upsetting the balance, more drastic restrictions will have to be instituted. (C.B.U. 5-4 Leave, d/18-9-41).

In view of the above, members of the staff of Canadian Detn. Brks. may apply for weekend leave to London and its suburbs for the weekend of 28 Sept. 41 and each alternate weekend thereafter, i.e. 12 Oct. 41 26 Oct. 41. etc. No exceptions will be made, and severe disciplinary action taken against any staff who deliberately evade these instructions.

Major.
(G.W.BALL) Commandant.
Cdn. Detention Barracks.

CERTIFIED TRUE COPY OF PART TWO ORDER NO. 61 d/24 Sept. 41

W.D. Wick
MAJOR.
(W.D. WICK) COMMANDANT,
CANADIAN DETENTION BARRACKS.

CANADIAN DETENTION BARRACKS

25 Aug 42.

M-10515 Sgt. Kylio, R.E.

1. Find attached, the original statement signed by the accused which is referred to in Lieut. Gillis' evidence.
2. This statement is produced as an exhibit and signed as such by me.

J.R. Gauthier

(J.R. Gauthier) Lieut.
Officer Taking Summary.

CANADIAN DETENTION BARRACKS

25 Aug 42.

M-10515 Sgt. Kylo, R.E.

1. Find attached, the original statement signed by the accused which is referred to in Lieut. Gillis' evidence.
2. This statement is produced as an exhibit and signed as such by me.

J.R. Gauthier
J.R. Gauthier) Lieut.
Officer Taking Summary.

6/8/42. 102

I fully understand I do not have
to make any statement unless I wish
to do so, and that it may be used in
evidence against me *W. H. H. H.*

During the latter part of 1941 I became
involved in an affair with a married woman.
In the following few months I incurred a
number of debts which my pay would not cover.
I borrowed money and sent home for more
but as time went on I became more deeply
involved.

In March 1942, I was so deeply in
debt, not only to the lady previously mentioned,
but also to friends who had advanced me
some of money, that I decided to break off the
affair and attempt to straighten the whole
thing up. I informed the lady of my intention
and at the time she was rather furious. She
was in possession of my wife's address and
knowing she might make things unpleasant
for me by writing my wife I attempted to
keep her quiet by paying her the debts I
owed her. She had told various tales to
friends of mine and spread rumors calculated
to cause trouble and I was certain she
wouldn't hesitate telling my wife.

At that time I was receiving some
of money from my wife who was under
the impression that my conduct was

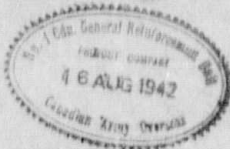
quite alright. Thinking I might be able to straighten my financial troubles I wrote to my wife and asked her to send me six thousand cigarettes per month. To the best of my knowledge she did as I asked her. The majority of these cigarettes I sold to chap- in the unit, loaned to others or gave away outright. There were however, three shipments which I sold to a civilian whom I have no intention of implicating in any way nor do I intend involving anyone else.

I'm sure that my wife wouldn't become suspicious I told her in various letters that I was pulling the proceeds in the bank and was quite well aware that I should have to save my army pay for quite a length of time in order to actually have any sum in the bank. About a couple of weeks ago I wrote my wife telling her to discontinue sending the cigarettes with the exception of one thousand for myself and one thousand for a friend who to the best of my knowledge receives no cigarettes from home.

Statement handed to Lt. Gillis

on 6-Aug-42
Produced in Summary of Evidence by Lt. Gillis
19 Aug 42
P. Garrison
Office taking Summary
M-10515 Sgt M. Kelly

The Officer Commanding,
Cdn. Provost Corps Coy.
Cdn Army Overseas.



Sir;

Re; Reg.No.M10515, Sgt. KYLLO.R.F.

(1) Whilst on duty in the Company office at Merval Barracks on the 15th inst. the above mentioned N.C.O. reported at 2210 hrs to me that he was A.W.O.L. from the Detention Barracks.

(2) This N.C.O. was sober and properly dressed.

(3) He was placed under open-arrest.

E.C. Richmond
A/Cpl.
Reg.No. G30273, E.C. Richmond.

4. O.C.
Cdn. Detention Bks.

Forwarded: *DJA*

REF.6/Kyllo RB/0

*When Capt.
O.C. Prov. Coy.
#1. C.F. R. U.*



21 Aug 42

To: Commandant,
Cdn. Detention Barracks.

1. With ref. to pending Court Martial proceedings, I do not wish the Convening Authorities to appoint an Officer to defend me.
2. I do not wish any officer to act for me as I desire to conduct my own defence.

R. B. Lytle Sgt.
(R. B. Lytle) M10515
Canadian Detention Barracks.

CANADIAN DETENTION BARRACKS

21 Aug 42

Re: M10515 Sgt. Kylo, R.B.
Application for P.G.C.M.

List of Witnesses for Prosecution

C11721	Sgt. Amyott, W.F.	Cdn. Det. Bks.
C30106	S/Sgt. Fouchard, T.	" " "
G7259	L/Cpl. MacQuarrie, JWS.	" " "
	Lieut. A. J. Gillis	DAPM, C.R.U.
K85437	Sgt. Johnson, S.L.	" "
	Mrs. J. W. Josephs, 57 High St. Guildford, Surrey.	

List of Witnesses for Defence

NIL

W. Tick Major
(W. Tick) Commandant,
Canadian Detention Barracks.

H

*J. H. Moore,
Major
Pres.*

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT In the Field ON THE 1st DAY OF Sept. 42

TRIAL OF:- No. M-10515 Sgt. Kylo, R. B. Unit Cdn. Det. Bks.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lt. J. R. Gauthier (Unit) Cdn. Det. Bks.

Defending Officer:- (Name) None (Unit)

At 1410 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No Sir

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:-

President Major J. H. Moore.....(Unit) RCA.

Members Major A. A. Baxter.....(Unit) U.S.M.Y.S.R.

Lt. C. M. G. Arthur.....(Unit) (C.Y.R.)

The officers under instruction are duly sworn.

Q2 Do you object to acting as shorthand writer? A2 - No

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P. 35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name Lt. J. R. Gauthier.....(Unit) Cdn. Det. Bks. sworn, produces AFB 236 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Reg'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - No Sir the evidence is correct.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No Sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

No. M10515

Name

KYLLO, Robert
Bernard

Sqn., Battery,
or Company

C. Detn.
Brks.

Corps Cdn. Prev.

Date of
enlistment

Sheet No. 3

G.C.

Badges

Signature O.C.
Company, etc.

MAJOR W. DICK

Service or

Proficiency Pay

M.F.M. 6

A.F.B. 122

FORM 7-41 (1210-20)

41-52-1772-20-1051

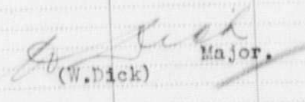
Character

Date of last entry in
Company Conduct Sheet

21-1-41

No. and date
of last drunk

Period not reckoning towards
freedom from extra fine

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Certified true copy.									
 (W. Dick) Major.									

(P.T.O.)

E. J. [unclear] 1941

ZZZ-64

ZZZ-65 Case #2

Pte. Kynock. J.N.

Pte. Fleming J.

See L-57 for 1st case

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 87233 PTE. JOHN NELSON KYNOCK } ICDA BASE SCHOOL OF COOKERY
H 19189 PTE. JAMES FLEMING } 1 CBRD GRP

Charge.	Plea.	Finding.	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
F87233 PTE JOHN NELSON KYNOCK (insert "alternative" where applicable.)	(See Instr p 2.)	(See note below.)	
1st CHARGE	NOT GUILTY	Guilty	*Special finding guilty only of stealing one tin of apricot jam
2nd CHARGE	NOT GUILTY	NOT GUILTY	
3rd H19189 PTE JAMES FLEMING	NOT GUILTY	Guilty	*Special finding guilty only of stealing one tin of apricot jam
4th CHARGE	NOT GUILTY	NOT GUILTY	

(Note: As to findings for lesser offences see AA 56, RP 44; findings an alternative charges see MML p 48 (n 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 (n 6).)

At present under sentence for _____ days commencing on (date) _____ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting trial _____ days, of which _____ days were spent in hospital (1)

(1. See RP 46(A) (n 2). Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: F87233 PTE JOHN NELSON KYNOCK to undergo detention for sixty (60) days
H 19189 PTE JAMES FLEMING to undergo detention for sixty (60) days.

(Sgd) Major Capt 18 Sep 44 (Sgd) Brigadier Major
Judge-Advocate, if any. Date awarded. President (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) (n 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 561-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 (n 1).)

My decision on the finding(s) and sentence set forth in Part I is: I do not confirm the findings of the Court on the first charges or the sentences of the Court.

I direct that the accused be not committed to prison or detention barracks until further orders (1)

(1. AA 57A. Delete if not used.)

(Sgd) Col Haldenby Brig. Date 29 Sep 44 Commanding CDN BASE RFT GROUP

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.
F-87233 Pte. John Nelson Kynock 30 SEP 44
H-19189 Pte James Fleming 30 SEP 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED RFT GROUP

FIELD GENERAL COURT-MARTIAL

RECORDED AT _____ 222-68
Convened at _____ of Brig. E. W. HALDENBY Comd HQ 1 CDN dated Sept 11 44
ACCUSED. BASE RFT GROUP.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptt, Arank or A/apptt, if any, see AA 182, 183, fns, KR Can 308, 320, 330.)
Number. (a) Prmt R. (b) Apptt, A/R or A/Apptt. Full Christian Names. Surname. Unit.

F-87233 PTE. JOHN NELSON KYNOCK
H-19189 PTE. JAMES FLEMING
PROCEEDINGS REVIEWED
Held at the Fd in (country) ITALY on (date) SEPT. 18 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnn RO1. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CS AFs, for auths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 137.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto. The Court is satisfied that it is properly convened and constituted, and is (are) amenable to military law, and each charge discloses an offence.

(1. As to use of Summary of Evidence see RP 17 (n 6). 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused (are) fit to undergo trial by court-martial. The Prosecutor informs the Court that accused (are) to be tried by court-martial instead of being dealt with summarily by the CO.

(1. KR Can 557. 2. AA 46(B), RP 60 (n 1). For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to _____ as interpreter? Ans _____

The Interpreter is sworn. Do you object to _____ as shorthand writer? Ans _____

The shorthand writer is sworn.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused. President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn. The following are the ranks, names and units of the offrs comprising the Court, etc.

President	MAJOR	G. L. HENRY (CAC) 5 Bn. 2 CBRD
Member	CAPTAIN	T. HULME (RCH) 2 Bn. 1 CBRD
Member	CAPTAIN	J. H. WELLS (ACA) 8 Bn. 2 CBRD
Judge-Advocate	CAPTAIN	D. W. ROSE (CIG) HQ 1 CBRD GP.
Prosecutor	LIEUTENANT	M. D. CLONEY (CIG) HQ 1 CBRD GP.
Defending Offr	LIEUTENANT	J. K. W. MACKENZIE (CIG) No 2 REALL CENTRE

Questions by President: Is the Prosecutor a lawyer? Ans YES. Is the Defending Offr a lawyer? Ans NO.

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pres a lawyer and Def Offr not, reference is entitle to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused before arraignment make plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fnn to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused (are) arraigned on all charges in the charge sheet. The accused (do) not object to any charge. There is no amendment to be made to the Charge Sheet. The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found guilty on more than one of two or more charges laid in the alternative (RP 37(A)). As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Officer. If Convening Officer concurs, Court may accept plea of guilty to lesser, etc. offence. (RP 44(H)). Accused may change a plea of Not Guilty to guilty during trial. (RP 38). As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A)).

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 90(C), 87(C), 91, 92; moving and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s) (1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment. (2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s). (1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty (2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined (3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire. (4)

President to accused: Do you wish to make a statement? Ans. YES SIR. (1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly. (1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule (1). (1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex, initialed and read aloud by the President. (1) (1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D6 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with (2). (1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above. (1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D6 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. YES SIR. (1) (1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address. (1) (1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken. (1) (1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed. (1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST AND SECOND charge(s). (2) The Court is closed, and considers the submission. (3) The Court is re-opened, and the President announces that the submission is disallowed on the FIRST AND SECOND charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former but the accused is (are) found Not Guilty on the latter charge(s). (4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.) NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence. (1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination. (2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination. (3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony. (4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. YES SIR. Are they witnesses as to character only? Ans. NO SIR. (1. RP 35. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed. (1) (1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s). (1) The finding(s) of the Court (are) recorded in Part I of the Schedule. (2) The Court is re-opened. (1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the FIRST CHARGE charge(s), being subject to confirmation, will be promulgated later. (1) Or, The President announces that the accused is found Not Guilty on all charges and that the proceedings are accordingly terminated. (2) Part I of the Schedule is dated and signed. (3) (1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? (1) Ans. YES SIR. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service (1), and certified true copy (copies) of Conduct Sheet(s) (2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(d) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C, C, and Ex D, D, D, respectively. (3) (1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? (1) Ans. YES SIR. BY OUR DEFEND OFFR. (2) (1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated. (1) (1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence. (1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any. (2) (1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 306, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 66(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, F87233 Pte John Nelson KYNOCK
and H19189 Pte James FLEMING, attached to
No. 1 Canadian Base School of Cookery, 1
Cdn Base Rft Group, soldiers of the Canadian
Army Overseas, are charged with

6th
SMK.

First Charge
AA Sec 18 (4)

When on Active Service, Stealing Public
Property in that they

In the Field in Italy, on or about 25 July
1944 stole

Two tins of plums
One tin of apricot jam

public property.

Second Charge
(Alternative)
AA Sec 40

When on Active Service, An Act to the Prejudice
of good order and military discipline
in that they

In the Field, in Italy, on or about 25 July
1944 was improperly in possession of

Two tins of plums
One tin of apricot jam

public property.

In the Field
29 July 1944.

B. M. Strong

(B. J. M. Strong) Major
DAA & QMG
HQ 1 Cdn Base Rft Group
Cdn Army - C M F

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
11 Sep 44

E. W. Haldenby
(E. W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group
Cdn Army - C M F

Approved for trial
under M.R. (Case) 1540

W. B. Sate
ADJA HQ, 1 CBRSGP.

The appointment of Capt D.W. Rose an offr having legal qualifications, as
Judge Advocate is hereby approved by me on behalf of the JAG, pursuant to
Overseas RO 4766.

W. B. Sate
(W. B. Sate) Capt
ADJA
1 Cdn Base Rft Gp
Cdn Army - C M F

SMK.

FIELD GENERAL COURT-MARTIAL

SMH.

(Whether the accused to be tried in under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate suby. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
F-87233	Pte		John Nelson	KYNOCK	No 1 Cdn Base School of Cookery 1 CBRGp
H-19189	Pte		James	FLEMING	No 1 Cdn Base School of Cookery 1 CBRGp

bit

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Sep 44 endorsed by me, (~~as-by-an-offr-of-my-staff-for-me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior-qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereof the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major C L HENRY (CAG) B Bn, 2 CBRD
(Rank) (Must be named. RP 106.) (Unit)

MEMBERS.

Capt or Lieut to be detailed by OC 2 Bn, 1 CBRD

Capt or Lieut to be detailed by OC B Bn, 2 CBRD
(Rank) (Named or detailed. RP 106.) (Unit)

WAITING MEMBER.

Capt or Lieut to be detailed by OC B Bn, 2 CBRD
(Rank) (Named or detailed, if any. RP 106.) (Unit)

JUDGE-ADVOCATE.

Capt D.W. Rose (CIC) HQ 1 CBRGp
(Rank) (Must be named, if any. RP 106.) (Unit)

On Active Service in the Fd

in Italy *S. W. Hadenby* Brigadier
(Country) (Signed personally. RP 105 fn 2.) (Rank)

Date 11 Sep 44 Commanding HQ 1 Cdn Base Rft Group.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2692.)

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (RP 95(C)), any objections (RP 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, BWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accused in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accused to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (RP 95 fn 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (RP 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (RP 60(C), 87(C), 92(C) (D).)

(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)), or evidence by accused, as to facts or his character or both. (See RP 41 fn 3, 40 fn 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (See RP 46 fn 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (RP 86(H)), or to prove previous convictions when accused has called witnesses as to character. (RP 86(C).)

(v) Closing address (on matters other than mitigation of punishment) by Defending Offr or accused. (See RP 40 fn 8-12, 87(C), 92(C) (D).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (When accused charged jointly see RP 61.)

(vi) Closing address by Prosecutor. (See RP 40 fn 7, 87(C), 92(C) (D).) Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).

(vii) Summing up by JA, if any. (RP 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (KR Can 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (i) (h).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (RP 95(D).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (AA 52(9), RP 118(C), MML p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

CERTIFICATE OF MEDICAL FITNESS

I have this day examined F-87233 Pte Kynock, John
Nelson and find him fit to undergo trial by Court Martial.

Signed this 18th day of Sep 1944.

J. Bowls Capt
Kame

OB
JMR

CERTIFICATE OF MEDICAL FITNESS

I have this day examined H-19189 Pte Fleming, James
and find him fit to undergo trial by Court Martial.

Signed this 18th day of Sep 1944.

John Joseph
same

at
DMR

D.M.

1st Witness for Prosecution

B 100581, Sgt Aubrey C.W. RCASC att. 1 Cdn Base Sct of Cookery 1 CBRGP having been duly sworn states:

I am an instructor in the 1 Cdn Base Sct of Cookery. At approx 1545 hrs 25 June 44 - Pte Austin called me & I went outside with him. There I saw Pte Kynock, whom I recognize in court, walking across a vacant field with two bundles under his arms. I was inside the fence of the school & Stanley Pbr. The vacant lot is on S.E. corner of the school and outside the fence. The accused was going toward the highway. I called him back - when he got back, close to the fence, he said this one bundle belongs to is not mine. It was a large bundle wrapped in a bush shirt, the other bundle was smaller, I can't remember how it was wrapped. Sgt Morris asked him to go to the mess hall. When he came in the bundles were unrolled - the large one marked ex. A contained 2 tins of plums, 1 tin apricot jam, a blanket all wrapped in a bush shirt. The other bundle contained denim trousers, new gym shorts, clean underwear (shorts & singlet) dirt. The tins of fruit in the large bundle were 2 tins Hanson Golden Plum, Double Crown brand on bottom of one tin, it was marked H 7 G - 7 H on the other tin H F G 6 H. The can of jam packed by S T E name Export Brewing Co Ltd - Nettle - Pagan (Salerno) and marked on top by words Italia - Italy - it was apricot jam. Both accused were present when bundles opened - Pte Fleming was sent for before they were opened. I recognize Pte Fleming who is in court. The Provost was called and took the accused men into custody.

Cross examined by Def Offs.

- Q. Were both accused upstairs before bundles opened?
- A. No Sir.
- Q. - There was a shirt around one of the bundles & no blanket around the blankets.
- A. Yes Sir.
- Q. What were the accused doing at the school?
- A. Under instruction in food cooking.
- Q. Did accused in the course have access to the kitchen?
- A. No Sir.
- Q. At night time is the ration store room locked?
- A. Yes
- Q. The entrance to both kitchen and storeroom is in front of Sgt's quarters - is it not?
- A. Yes Sir, approx 30 ft.
- Q. Would it be possible for accused to steal jam?
- A. Possible chance.
- Q. Is there an S.C.O. or cook on duty all day?
- A. Yes Sir.
- Q. Is storeroom locked all night?
- A. Yes Sir.

Q 10 Was it broken into?

A 10 No sir, there is also a storeman in it from morning till night.

Q 11 Do you ever draw jam or milk?

A 11 Yes sir and have it marked in the ration books.

Re examina.

Students are allowed to draw supplies when preparing meals and for that purpose only.

I generally check storerooms to see they are clean etc. I have some brand of jam in kitchen and ration storeroom.

By Court. The scale of issue of milk is 4.0g - 4.5 Tpkas
3 3/4 oz. Eng.

The plums and jam at A were issued to the unit as ration

R.P. 83 (B) complied with.

2nd witness

L 7462 Sgt Moonie A.A. RCAF at 1 Cdn Base Sd of
Cookery 1C13K GP having been duly sworn states.
I am an instructor at the school. At approx 1500 hrs 25 Jul
44 I was in the instructor's office there, when Pte Austin
came in and as result I ran to the gate of the school
(Stanly Bks) and proceeded up the highway in a SE.
direction. I found Kynock, whom I recognize in court
carrying 2 bundles. - he was approx 50 yds S.E. of the fence.
He had been called back by Sgt Alroy. I told Kynock
to go into the mess hall where we had him open the bundles,
one contained 2 tin of plum, 1 tin apricot jam, a
blanket, underclothing (Vest and shorts) all of which were
wrapped in a bush sheet. The bundle of a in the
one I refer to. The other bundle had a pair denim
trousers and 2 pair shorts. I had one of the yards
go for Pte Fleming. When he came to the mess hall
I asked him if the large bundle (of a) belonged
to him Pte Fleming said "Yes". Kynock was present
when both bundles opened - they were opened directly
after we arrived in the mess hall. Provost were called
and I had accused placed in ^{close} arrest.

Cross exam. by Def Off.

Q. Is the storeroom open to the accused in Day time?

A. They are not supposed to go in - there is a storeman

Q 2. At night.

A 2 Locked at 2100 hrs.

Q 3. What duties were accused on, on 24-25 Jul 44?

A 3 On field duties - during a break they can go to kitchen
for tea.

Q 4. Is a kitchen closed at night?

A 4 No sir, only the storeroom.

- Q 5. Were accused in kitchen those days?
- A 4. If they were in, they were on their own.
- Q 6. Can you get a can of jam from the storeroom?
- A 6. Yes and it is checked off in the ration book.
- Q 7. Did you see the accused take the plums?
- A 7. No sir.

Re-exam.

The accused if they got anything from the storeroom would have to give a receipt and it would only be for use in the kitchen.

Court

The plums and jam ex A were issued to the school as rations - plums from NAAF1, jam from R.C.S.C.

R.F. 83(B) complied with.

3rd Witness

B 65525 CQ MS Johnston E.W. CQMS 1C BRGP. having been duly sworn states;

As CQMS I draw all rations used by Sps HQ and the 1 Cdn Base Sch of Cookery. The rations are all put in the same storeroom at the school (Stanley Bldg) they are handled by the Sgt in charge of kitchen. On 25 Jul 44 Sgt Moonie was in charge and I handed them to him. I know the accused who are now in court, they were on a cooking course on 25 Jul 44. I go into the storerooms daily and have seen rations issued to me on the shelves. I recognize 2 tins of plums and 1 tin of apricot jam ex A. as I purchased the tins of plum from the NAAF1. I think it was on 19 Jul 44 I purchased 72 tins of the same brand from the NAAF1 using the mess canteen funds to do so, I turned them over to Sgt Moonie. The apricot jam was issued in the regular rations from D.I.D. The Sgt in charge arranges for their issue to the students for use at the school through the storeroom.

Cross exam. by Def. Offr.

Q. Can you buy plums of same brand at any canteen.

A. I haven't seen any - haven't investigated. no Re Exam. R.F. 83(B) Complied with.

4th Witness for Prosecution

D 122916 Pte J.B. Austin, patient 15 Cdn Gen Hosp having been duly sworn states.

I was formerly on strength 1C BRGP att to 1 Cdn Base Sch of Cookery. I was on night duty on 25 Jul 44 in the kitchen. At approx 1845 hrs that day I was facing the window at the rear of the kitchen of Stanley Bldg looking out on road. I then passed the bldg. I saw Pte Fleming, whom I recognize in court, throw a bundle over the fence, the bundle was received by Pte Reynolds whom I recognize in court.

47
D.M.C.

The fence has a concrete base in some places 2' in 4' high. From there up it has iron poles 3 to 4 ft apart - they are upright, from there up a thick mesh wire with 3 strands of barbed wire - in all the fence is about 12 ft high. I got Sgt. Hey and Mooney. They called Kynock back - Sgt Mooney went out through the front gate of the bhs and along the front road and brought Kynock back in. We had some plums in the storeroom the first we had had in the storeroom while I was there. We got them in a few days before. I was a student in the Sch. at this time. I couldn't draw plums or jam when working as a student cook in the kitchen - you would get them for preparing meals - the rations drawn would be marked off by ~~storeman~~ storeman in his ration book - I never drew plums myself never saw plums on sale in men's canteen.

Cross Exam by D of Off

Q. Did you ever go to the canteen to buy plums?
A. No, but there is a list put up of goods available in the canteen for sale there and plums didn't appear on it to my knowledge.

By Court.

I saw the bundle thrown over the fence by Pte Fleming.

Prosecution closed RP 83(B) Complied With.

The Court adjourned at 1200 hrs to reopen at 1400 hrs.

Court reopened at 1400 hrs.

Defendant's officer submits no case by prosecution address attached as P 4(a).? marked Ex B.

Prosecution submits - that the evidence constitutes a prima facie case, it is shown that Fleming threw a bundle over the fence to Kynock at the back of the bhs. That the contents of the bundle Ex 8 contained plum and jam. The former were similar to that purchased by the CQM's and the later was issued by D.I.D. Evidence of furtive manner indicial's stealing and points to accused trying to make away with plums and jam. There is enough evidence to put the accused on their defence.

Court closed to consider motion.

Defending Officer's Submission.

I refer court to M.M.L.P. 22 Sec. 33 "The property stolen must have been taken and carried away without the consent of the owner". Thus the prosecutor has to prove that the accused took jam from the storeroom where it is said to have been kept. The prosecutor has also to prove the accused's intent M.M.L.P. 22 Sec. 33. In this case the prosecution would have to prove that the accused intended to deprive permanently, by eating, selling or giving the jam away. The prosecution's own witnesses have proven: 1. That the storeroom is kept under lock and key at night and that it was not broken into. 2. That during the day time the storeroom is under observation of cooks or 700, a fatigued man. 3. That the door to the storeroom is opposite the Sgt's Quarters and open to their observation. 4. The two tins of jam are not public property. 5. That during the day the accused on a course away from the storeroom. Then in view of the fact that none of the witnesses saw the accused take any jam, that the storeroom is locked at night and it is not said that any jam is missing. Then the prosecution has not established a prima facie case and I ask the court to throw out the charge of stealing.

1st Witness for Def.

Capt C.A. Bushnell, RASC, OC 74 DID having been duly sworn states that Jam the O.C. 74 DID and that the apricot jam, etc was definitely DID issue but that the plums might be purchased at NAD 71 and in some circumstances are ration issue either in Compo or in hospitals.

Cross exam by Pros. Off.

The army has a contract with the maker of the jam and it is solely made by cog for the Army. Plums can't be purchased outside army at NAD 71, ordinarily. It is possible maybe to purchase plums on black market - this is only an opinion and not known as a fact. The fruit, plums is an alternative to fresh fruit. Might be possible to purchase plums in an army canteen. No Res Exam. No question by Court.

R.P. 83(B) complied with.

2nd Witness for Def.

F 87233 Pte Kynock J.N having been duly sworn states that.

I was with W.R.S.R since landing in Sicily until wounded in Hitler line on 24 May 44. I got out of hospital about 2 weeks later - about 6 or 7 Jun 44 I went to 10 BRD. In Jul 44 I went to the Cooking sch. as a student. On 24 Jul 44, I went out the main gate with my bundle of laundry consisting of a blanket, some clothes a tin of apricot jam and 2 tins of plums. I was going to take them down to some friends living in 2nd house from the cooking sch. - it is set in off the road a short distance. Fleming came out & asked me if he would take his laundry & ran into the billets and got his bundle of clothes and threw it over the fence to me. Sgt Moonie called me back & took me into the dining room. I got the tin of jam from the tins we broke camp at Campobassa when I was with the unit. It would be about 1 Mar 44. We were issued fruit before going into the Hitler line and also bought some at 14 Cdn Gen Hosp. When I was a patient there, I had some thin tins of fruit and cheese, etc.

Cross exam by Pros.

On the evening of 25 Jul I proceeded through main gate - that the bundle contained fruit etc. The guard did not examine the bundle. I was pretty well dressed at the rear of the line and that the place I was going to go to

N.M. (6)

was down the rd. from the Sch. It was an notion of mine that I took to go across the vacant lot although it was longer to go that way. I was taking the blanket to get it washed as its pretty hard to wash it inside. I was going to take the fruit to some friends as they had been good to me. The fruit issued to me before the Hitler line was in my large pack. The jam I got at Campagna. I was kind of excited when I told Sgt Abrey & noone that the bundle wasn't mine. I dont know what was in the bundle Fleming threw over the fence. I was never in the Sch. Ration Storeroom. Never drew rations while at the sch.

Re exam

I was off the road when Sgt Abrey called me.

Pay Court.

Fruit issued before Hitler line Act. Issued as rations for duration of att. Wore small pack in att. Cant remember size or no. of tins issued. Most of the pl. had tinned fruit.

R.P. 83 (B) Complied with.

3rd Witness for Def.

F 41562 Sgt Ellis J.W. 1Bn 1CBRD having been duly sworn states.

I havent been on the fd since Sicily - the equipment then worn was Battle Order plan small packs. When we break camp hurriedly we distribute the surplus rations amongst men.

Cross exam by Pro. I dont know anything about dress in Hitler line Act. The food given out was usually for men - if the truck was due it would be loaded on it. But where truck couldnt move fwd. the rations were broke down to the men.

Re Exam Never ask another man to carry another rations.

No Recst by Ct.

R.P. 83 (B) Complied with.

5th Witness for Def.

(7)

DWR

B 175 30 Pte Reilly E.S. 2 Cdn Reall. Centre
having been duly sworn states that.

I am cook at 2 Reall Centre. I cooked in
the fd for an Eng. Coy when breaking up
camp & there was surplus rations we placed
them out for the men. I have given apricot jam
for men on night exercises.

No Cross exam.

By Court We didn't give out surplus food
in the Eng. Coy except when going out to do
a night job, then they took their rations in bulk.

R.P. 83 (B) complied with.

Defence closed.

Address by Def. Off. pp. 889.

The accused Pte Kynock admits ownership of some jam given to him as rations distributed in the field and a man carrying his issued rations should not be guilty of improper possession. He also admits buying some fruit at 14 Ben. Hark. which could be the jam in question. The prosecution have in no way proved the accused took the jam from the kitchen therefore "The burden of proof" has not shifted to the accused and the prosecution has to prove that the jam came into Kynock's possession improperly, as he is innocent until proven guilty.

Since the prosecution have failed to prove that the accused came into possession of the jam in an improper manner than the accused's wisdom that he was issued the rations in the field should give him the benefit of the doubt.

1. The Defense has proven to the court that in the field rations are issued in bulk and on the count of a platoon moving, the surplus rations are divided up and issued out to those who want to take them - I am speaking here of the apricot jam.

2. The Defense has proven in court that the jam mentioned is a general issue and that it could have been issued at any former time to any part of the army or to any canteen. I would like to suggest to the court that a man in a fighting unit often has not the time or the ability to carry rations such as jam into action and I also suggest that it is a common thing for a front line soldier to bring jam, fruit and cheese out in their packs when they come down from the front.

Should the court, and I repeat, have any doubt as to the accused's coming into the possession of the jam then the accused should get the benefit of the doubt.

The two tins of plums are not public property, but rather canteen property. In short the prosecution has failed to prove.

1. There has been no mention of any plums or jam missing and this should be easy to prove as a record of all stock issued is kept.

2. The two tins of plums were not public property.

3. The prosecution admit the impossibility of the accused being able to get the jam.

In view of these facts I ask the court to dismiss the charge.

Action by Prosecutors office.

5 APR 9

To convict accused it is necessary to show they were in possession of unlawfully obtained items in the charge. In first charge it is necessary to establish that Rynock was seen at the house of the Stanley like evidence received from Fleming a bundle. Have evidence of Austin & Syta Bray & Morris to establish that the large bundle was used over fence by Fleming. This admitted by Rynock when he was first approached by Sgt Morris & on the next day Fleming subsequently acknowledged this bundle as his own. It seems difficult to believe that there was any doubt in their minds at that time the turning of bundle over the fence indicated intention and health in fact & accused & there is no indication that they were aware of any reward paid. It is also to be noted that Rynock was travelling the enclosure crossing vacant lot S E of 10th & proceeding on a Sthly. direction towards main rd when stopped. This is so even though he states that his intention was to go down the rear rd. to the home of some friends who lived on the north of the rd. Also established by Sgt C. J. M. & others that telephone which were found on person of Rynock were of the exact brand as those shown to the witness before. The amount shown is stated to be an amount for the purpose of some mortgage. It was an opportunity for the accused to get some thing from the stores & it is deduced from evidence of witnesses that these tools were obtained from the stores appropriated to use & carried & made away with for the purpose of disposing of them to persons unconnected with army. If sure of Rynock obtained these cases as he says he did he would remember which they were. Not reasonable that he could have carried them into action. No direct evidence of theft but evidence of surrounding circumstances is suff. base to warrant a finding of guilty on 1st charge or on alternative charge. Both responsible.

Rebuttal Statement by Def. Off.

1 No evidence it was large bundle thrown over fence. No evidence Rynock walking across fd.

J.M.

J.A. address

The evidence has been well reviewed by
 def. & pros. officers. It is not the duty of the V.A.
 to do more than tell the court that they must
 judge who is telling the truth and that if they
 believe the def. then with not investigated
 they can make their findings accordingly.
 It is the duty of the V.A. to assist the court
 on the law & to see that all available evidence
 is brought out in the examination of the witness.
 The accused are jointly tried on a charge
 under Sec. 18 (A) and it must first be
 determined whether they did steal public
 property, that is did the things they are
 alleged to have stolen were in fact taken
 out of the stores of the col. by the accused. If
 so were they public property within the meaning
 of the section. The pleaders would appear
 to be not public property but rather property
 belonging to a Reg'tal. hon. This however does
 not vitiate the charge because if the court
 find they were not public property can be made.
 gain was - a special fund that the goods were
 Secondly if the court find that they were in
 not stolen they can still find they were in
 improper poss'n. Stealing is the unlawful
 taking of another property with the intent
 to deprive the owner of his rights in the property.
 The question is reasonable doubt may arise
 but this doubt must not be any far-fetched
 doubt but such as a reasonable man might
 have as to the guilt or innocence of an accused.
 - considering the facts. If they have such
 a doubt they must acquit the accused.

Character Evidence

1st Witness for Def.

F41562 Sgt Ellis J.W. 1 Pm 1 CBRD. already sworn

11.
DNR
States - I have known Reynolds since June 43, I have not known him very well - I was talking to his Pl. Sgt in Sicily and he told me that to the best of his knowledge and mine Reynolds reputation has always been good in the Regt. That is all I can say.

(No cross exam a quest by court.)

R.F.S. (B) complied with.

Captain RAW. Mackenzie 2 Cdn. Reall. Centre having been duly sworn states.

I know Fleming from 15 Nov 43 until 30 Jun 43 when he was cook in Coy Mess Crookham Coy. He was an efficient cook and other soldiers whilst I was there.

R.F.S. (B) complied with

H 19189 FC Fleming J. having been duly sworn states that.

I joined army 2 Sep 43 - came out to Africa 10 Jul 43. I joined on 29 Nov 43 the F.P.C. at Somp-lesse. I was with them until we came out of the Adriatic. In 24 May I was out with skin disease.

No cross exam. or quest by ct

R.F.S. (B) complied with.

Plea in Mitigation of Sentence

12
S.M.C.

Pfc Kynock has an unique record in that he has been in a rifle company in the front line longer than any other soldier I know. He landed in Sicily and never left his unit until about 9 Dec 43 when he left for hospital with Yellow Jaundice. He went back to his unit about 1 Feb 44 and remained with them until coming out wounded on 24 May 44. This means he is a veteran of Sicily - The Moro Casing, San Leonardo battles and the Hitler line slow.

If proper possession of gun in his own unit would be handled by his platoon comd. However in Avellino it appears to be a Court Martial offence. Kynock has a clean record. Through some error or circumstance the two accused have spent 54 days in detention awaiting this trial.

I ask the Court if they possibly see fit that the two months already served is sufficient punishment. I also suggest that given any more time will only embitter a man who has proved himself a good soldier.

C. K. H. C.

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number. HL9189 Rank. Pte Name. FLEMING, James. Regiment (or as the case may be). 7 Bn 2 CERD

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :-

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheets mentioned should be produced in court with this statement and not appended to the proceedings.

	* Within last 12 months.	* Since Enlistment.
For AA Sec 15(1)	- 2 times	- 5 times.
For AA Sec 12	- 1 times	times.
For AA Sec 40	- 2 times	- 3 times.
For	times	times.
For	times	times.

* See para. 877, R.R. 1240.
* The members herein mentioned should agree with the number of years in the conduct sheets, and the court should give advice in each entry, and to any proposed special case of gallantry or distinguished conduct.
* In section 47 the charge is not drunk and the option for drunkenness must be stated separately and dated.

ms There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or

3. The accused is not under sentence at the present time or

4. The accused has been in confinement, awaiting trial on the present charges, for 14 days of which 12 days were spent in hospital.

5. The present age of the accused according to his record of service attestation paper is 30

6. The date of his commission specified in his record of service attestation paper is 2 Sept 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 11 mos 5 days

8. *ms* *ms* 9. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or award)). CVSM&C

10. *ms* 11. *ms* 12. *ms*

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 439189 Rank P/Co Name PLEATING, JAMES of Regiment (or as the case may be)

(INSTRUCTION—A variation extract from the regimental books, stating these convictions and dispensations with trial, must be retained.)

Description of court by which trial, or standing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of other dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority dispensing or of the dispensing authority.	Punishment remitted.
NIL				

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.
 Signed this 8th day of AUGUST 1944

W. J. Long, Lt Col Comd. HQ, 1082 Coy

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:
 Date of Promotion, _____ years.
 _____ years.
 _____ years.
(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the information may be collected from such sources as are available though, except in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)

Exhibit B. 2nd Sub

ARMY FORM B.2106.

Statement as to Character and Particulars of Service of Accused.

Number. Rank. Name. Regiment (or as the case may be).

F 87233 Pte KYNOCK, J.N. 7 Bn 2 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—At a trial by field general court martial this summary may be compiled from the full conduct sheet.

The conduct sheet mentioned should be produced in court when this statement is read out but not appended to the proceedings.

† See para. 677, A.R., 1920.

* The summary herein stated should correspond with the entries in the conduct sheet, promissory letters given to the soldier, written services in each entry, and to any recognized special award of gratuity or discharge certificate.

‡ Instructions.—1. The charges for transgressions the nature of which are stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For A.A. Sec 15 (I)	3 times	4 times.
For A.A. Sec II	times	I times.
For A.A. Sec 15 (3)	times	I times.
For	times	times.
For	times	times.

~~Nothing of a nature of military or disciplinary conduct~~

There are no entries in the conduct sheets of the accused.

2. ~~There are no entries in the conduct sheets of the accused.~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~as the result of the present trial under section 47 of the Army Act.~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ ~~XXXXXXXXXXXX~~ fourteen 55 days in military custody, making a total of ~~55 fourteen~~ 55 days of which nil days were spent in hospital.

5. The present age of the accused according to his ~~XXXXXX~~ attestation paper is _____.

6. The date of his ~~XXXXXX~~ attestation specified in his ~~XXXXXX~~ attestation paper is 4 Aug 41.

7. The service which the accused is allowed ~~XXXXXX~~ towards discharge or transfer to the reserve is 3 yrs, 1 mo + 14 days F. STET service.

8. The accused is entitled to deferred pay or gratuity in respect of _____ service for the purpose of determining his pension, etc.

9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or reward) C USM & classt.

11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of _____

12. (In the case of an officer.) The accused holds in the army the rank of _____ dated _____ and in his regiment (or corps or department) the rank of _____ dated _____

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F-87233 Rank Plt. Name KYNOCK, J. N. of _____ Regiment (or as the case may be).

(INSTRUCTION - A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which trial, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under S.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
/				

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29th day of July 1944

W. J. ...
W. J. ...

In the rank of _____
 In the rank of _____
 In the rank of _____

years,
 years,
 years,

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date. _____
 Date of Expedition _____

(Instruction - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraphs must be struck through except that in the case of a trial by field general court-martial the information may be supplied from such sources as are available and the paragraph omitted amended accordingly.)

N.H19189 Name **FLEMING, James** Sqn. Battery, or Company

SUPPLEMENTARY
 Co. **RCASC**

Date of enlistment **2 Sept 39** Badges

Service or Proficiency Pay **MM 6 (AFM 122) (AFM 136) (435)**

Date of last entry in Company Conduct Sheet

No and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No

Signature OC Company, etc

Character

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3-11-41	Pte		AA Sec 15(1)		168 hrs Det.	11-11-41		Forf 1 days pay 149(1)(a) Forf 7 days pay 149(1)(b)
Field	15-12-41	Pte		AA Sec 40		168 hrs Det	16-12-41		Forf 7 days pay
Field	19-1-42	Pte		AA Sec 15(1)		168 hrs Det	20-1-42		Forf 1 days pay 149(1)(a) Forf 7 days pay 149(1)(b)
Field	3-4-42	Pte		AA Sec 15(1)		168 hrs Det	3-4-42		7 days pay 149(1)(b)
Field	31-7-42	Pte		FGCM		90 days Det	12-8-42		Forf 5 days pay F&I 149(1)(a) 90 days pay 149(1)(b)

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15-5-43	Pte		AA Sec 15(1) AA Sec 40		10 days pay 10 days F.P.			10 days pay F&I 149(2)
Field	31-7-43	Pte		AA Sec 40 AA Sec 10(3)					1 days pay 149(1)b
Field	4-11-43	Pte		AA Sec 15(1)					10 days pay 149(2)
Field	7-4-44	Pte		AA Sec 19 1st Offence AA Sec 40					10 days pay 149(2)
Field	25-6-44	Pte		AA Sec 40					10 days pay 149(2)
				Certified true copy of MFM 6 extracted from MFM 4 (28-7-44) (J.E. Campbell) Capt.					

F. 87233.

(Sheet destroyed 29 Jun '42.)

No /

Name KYNOCK, J.W.

Sgt. Battery,
or Company

Corps

Date of
enlistment

4/8/41.

GC
BadgesService or
Proficiency Pay

N/A

MFM 6

(AFM 122)
10/PAN/150 (1942)Date of last entry in
Company Conduct Sheet

nil

No and date
of last drunk

nil

Period not reckoning towards
freedom from extra fine

N/A

Sheet No 1

Signature OC
Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order discharging with trial	By whom awarded	Remarks
Sussex, N.B.	19/2/42.	Pte.		Failure to appear on parade, causing another man to perform his duties.		Forf. 1 days pay & allow. Art. 150B (FW&I)	19-2-42.	Maj. McQuade	Forf 1 days pay.
Algonquin Camp	6.7.42.	Pte.		WOAS, NWL from PT parade, Sec. 15(AA)	Lt. Bullock.	7 days CB	8-7-42.		
Algonquin "	17-10, 1942.	Pte.		AA. Sec. 11. WOAS, negl. to obey C.S. orders - at 1525 hrs, 17 Oct. '42 - did not pry compliments to flagged car of Brig. Phalen.	Documentary	7 days CB, & Forfts. 1 days pay.	30 Oct. 1942.	Lt-Col. Lawson.	
Field	7/1/43.	Pte.		WOAS, NWL, 3 days, 5 hours, 45 mins.		7 days pay.	14/1/43.	Lt-Col. Bengert (?)	

(PTO)

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5/10, (43.	Pte.		Sec.15(2) AA. AWL 2215 hrs. until 1515 hrs. 6 Oct. '43 (17 hrs.)	Sgt. Zwicker, Pte. McCals	5 days CB 1 days pay.	7 Oct. '43.	Lt. Keefe.	
Field	21/3, (43.	Pte.		WCAS AWL from 1000 hrs. 21 Mar. 1944 until appreh. by H. Police at POLLATHI on 30 Mar. '44.	Sgt. Wilkinson	28 days pay Forf. time absent.	30 Mar. 1944.	Lt-Col. Waterman.	
				<p>CERTIFIED TRUE COPY <u>Washington Lind A/AOS</u> <i>from the Right books in my custody</i></p>					

SUMMARY OF EVIDENCE

JMR

In the cases of F-87233, Pte KYNOCK, JOHN NELSON, The West Nova Scotia Regiment, and H-19189 Pte FLEMING, JAMES of the Royal Canadian Army Service Corps, presently attached on course to No 1 Canadian Base School of Cookery, soldiers of the Canadian Army Overseas.

The Commanding Officer directs that the Evidence will be taken on Oath.

1st WITNESS) D-122916 Pte AUSTIN, "J" "D", on strength of 1 Canadian
for the Prosecution) Base School of Cookery, having been duly sworn, states:

I am D-122916 Pte Austin, "J" "D", on strength 1 Canadian Base School of Cookery. On Tuesday, 25 Jul 44 at about 1945 hrs while working and on duty in the cookhouse of Stanley Barracks and facing the window looking to the rear of the building (north-easterly), I saw Pte Fleming, whom I recognized, and now recognize, standing inside of the fence which encloses Stanley Barracks. The fence is made of cement for about two feet and then wire netting, supported by iron poles, for about twelve feet, and surmounted by three strands of barbed wire. He tossed a bundle, composed of a blanket wrapped about, over the fence. Pte Kynock, whom I recognized and now recognize, was on the outside of the fence, on the rear road running south-east, and received the bundle. I went into the office of the School of Cookery and notified Sgts Abrey and Moonie. They accompanied me outside the building. Sgt Abrey and I called to Pte Kynock to return to the building. Sgt Moonie went out the front gate along the front road running south-east and brought Pte Kynock back with the bundle. I then returned to my duties.

Cross-examined by accused, Pte Fleming, J.

Question: Are you positive that the blanket was on the outside of the bundle?

Answer: To the best of my knowledge, Yes.

The accused persons decline to cross-examine this witness further.

Sgd "J" "D" Austin

"J" "D" Austin

2nd WITNESS) B-100581 Sgt ABREY, Charles, WILLIAM ROAME, presently
for the Prosecution) attached to 1 Canadian Base School of Cookery, having
been duly sworn, states:

I am B-100581, Sgt Abrey, C.W. presently attached to 1 Canadian Base School of Cookery. At approximately 1945 hrs on Tuesday, 25 Jul 44, I was in the office of the School of Cookery, in Stanley Barracks. Pte Austin came in and called me outside. I went outside with Pte Austin and saw Pte Kynock, whom I recognized with two bundles under his arms proceeding south-east, outside the enclosure of Stanley Barracks, across a vacant lot. I called for him to come back. Sgt Moonie had proceeded out the front gate, went south-east down the front road and met Pte Kynock returning at about the juncture of the enclosing fence with the main road. Pte Kynock returned with Sgt Moonie to the Mess Hall of the School. I opened one bundle, which was covered with a bush-shirt. Inside, I found it to contain a grey blanket, two cans of plums (Hansons Double Crown Brand), one can of apricot jam. (weight - ~~11/2~~ 2 1/5 lbs, St Erasmus brand). The other bundle contained one undershirt, one under-shorts, one blue gym shorts and one denim trousers. These articles, marked Exhibit "A" are now produced to me and I recognize them. Pte Kynock stated that the bundle, containing the blankets, jam and plums, did not belong to him. He claimed the smaller bundle as his own. I had sent for Pte Fleming and he entered the Mess Hall. Pte Fleming admitted owning the larger bundle. I then got in touch with the I of C Provost by phone. Four provosts came and took away the two accused, Ptes Fleming and Kynock, whom I now recognize. As part of my duty, I am called upon to check the condition of the kitchen and bakery daily. I am accustomed to see plums and apricot jam of the brands previously mentioned in the kitchen stores. On the bottom of the Hanson's plum cans, I read the serial numbers "MPG-7H" and "MPG-6H" and on the top of the

.....Cont'd.....

Apricot jam can the words "ITALIE - ITALY". The condition of the aforementioned articles of clothing which I now inspect is as follows: the bush-shirt is soiled, as are the undershirt and under-drawers; the denim trousers appear to be new and clean; the blue gym-shorts have been worn and washed but they are clean. After the accused persons were taken away, I returned to my duties.

The two accused persons decline to cross-examine this witness.

Sgd C.W. Abrey *C W Abrey*

3rd WITNESS) L-7462, Sgt MOONIE, Allen Austin, RCASC, on strength
for the Prosecution) 1 Canadian Base Reinforcement Group, and attached to
1 Canadian Base School of Cookery, being duly sworn,
states:

I am L-7462, Sgt Moonie, Allen Austin, attached to 1 Canadian Base School of Cookery. At 1945 hrs, Tuesday, 25 Jul 44, I was in the office of the School of Cookery with Sgt Abrey. Pte Austin came in the office. As a result of his statement, I left the building, ran through the main gate and south-easterly down the front road which passes Stanley Barracks. When I reached the end of the front fence, about twenty feet from me, I saw Pte Kynock, whom I recognized and now recognize, approaching the fence in the direction of Sgt Abrey, who was standing inside the enclosure, and carrying two bundles under his arms. Pte Kynock stated that the larger bundle which he carried was not his own and that he was taking it down to be washed for another soldier. I took him to the Mess Hall of the School. The bundles were then opened. The large one was wrapped with a Canadian issue bush-shirt; the small one, wrapped in denim trousers. I now inspect articles of clothing, two cans of plums, one can of apricot jam and one grey blanket, all marked Exhibit "A", and I recognize them as being the ones I saw on 25 Jul 44 in the possession of Pte Kynock. Before the bundles were opened, however, Pte Kynock was taken upstairs into the sleeping-quarters of the School under escort of two camp guards of the Westminster Regiment. The guards returned to the Mess-hall after a few minutes, bringing with them Pte Kynock and Pte Fleming, whom I now recognize. The bundles were opened in the presence of the two accused. Pte Fleming identified the large bundle as his. About three provosts of the 1 of C Provost Company, Avellino, arrived, made a list of the contents of the bundles, took the names of the witnesses and took the two accused away with them.

The two accused decline to cross-examine this witness.

Sgd A.A. Moonie, Sgt. *A.A. Moonie Sgt.*

4th WITNESS) B-65525, CGMS JOHNSTON, Edward William, Queen's Own
for the Prosecution) Rifles, on strength of HQ 1 Canadian Base Reinforcement
Group, having been duly sworn, states:

I am B-65525, CGMS Johnston, E.W., of HQ 1 CBR Gp. As Quarter-master Sergeant of Group Headquarters, it is my duty to issue rations to the Sergeant IC kitchen at Stanley Barracks for the men quartered there, including those on course at 1 Canadian Base School of Cookery. On 25 Jul 44, these two accused men, Ptes Kynock and Fleming, whom I now recognize, were on course at 1 Canadian Base School of Cookery. I am accustomed in the course of my duties to see the rations on the shelves of the Stanley Barracks kitchen. I now inspect two cans of Hanson's Double Crown Plums and one can of St Erasmo Apricot jam, included amongst articles of clothing and a grey blanket, all which are marked Exhibit "A". These cans of preserves are of the same brand as those which I issued on Wednesday, 19 Jul 44, to Sgt Moonie of the School staff. These rations were exactly similar in appearance to the cans of preserves which I now inspect. The first occasion upon which we have ever had Hanson's Double Crown plums in stock at Group HQ was on 19 Jul 44. The articles of clothing and blanket which I now inspect, and marked Exhibit "A", are all of army issue.

The two accused persons decline to cross-examine this witness.

Sgd E.W. Johnston. *E.W. Johnston*
.....Cont'd.....

The accused persons were cautioned in accordance with R.F. 4(E) as follows:

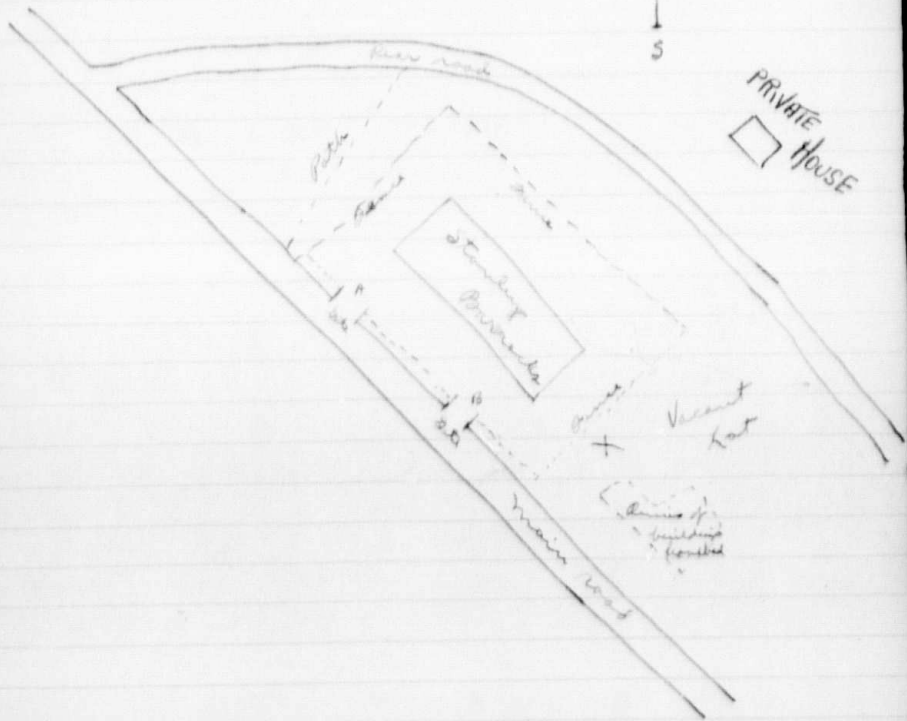
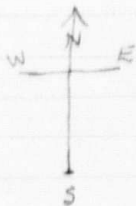
"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused persons declined to make a statement or to give evidence upon oath.

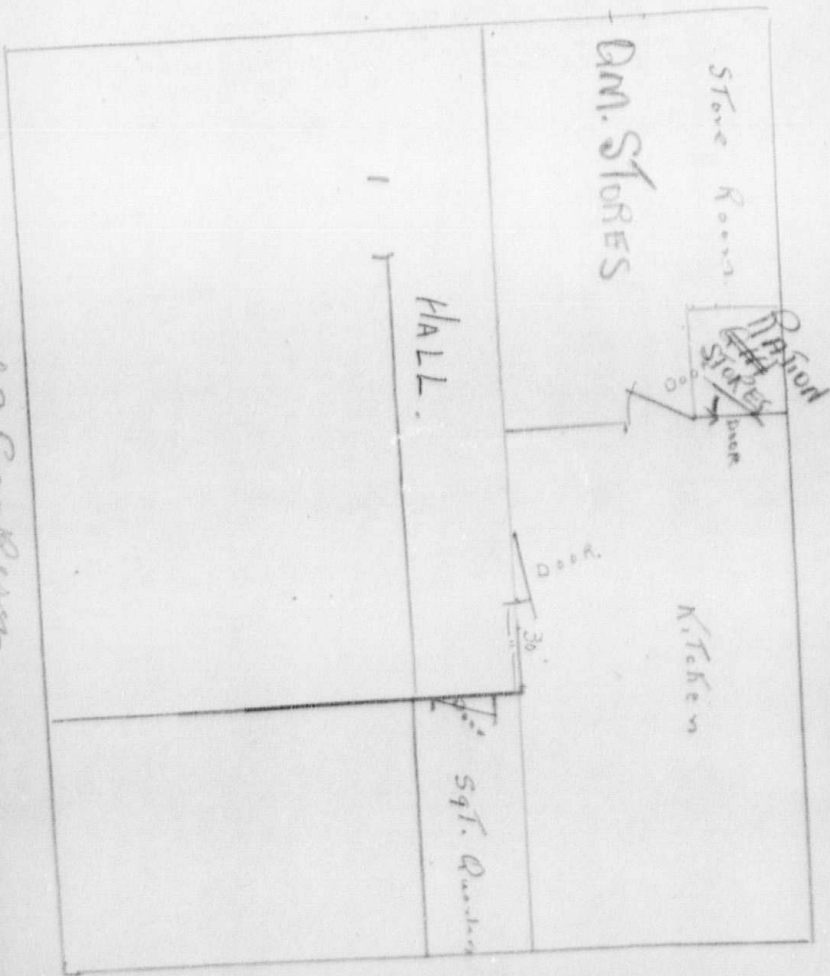
I certify that the foregoing Summary of Evidence, consisting of six pages in my handwriting, was taken down in the presence and hearing of the accused persons and they were given an opportunity to cross-examine the witnesses and that R.F. 4(C), (D), (E), (F) and (G) has been complied with.

In the Field
July 27, 1944.

J. J. [Signature]
Officer detailed to take
the Summary.



Small Cooking



~~Sketch~~ "B"

BT

The accused was cautioned in Accordance with
R.P. 4 (a) as follows:

"Do you wish to make any statement or to give
evidence upon Oath. You are not obliged to do so,
but whatever you say or any evidence you give will be
taken down in writing, and may be given in Evidence.

The accused reserved his defense.

I certify that the foregoing Summary of Evidence was
taken down in the presence of the accused and that
R.P. 4 (c) (d) (e) (f) and (g) have been complied
with.

Lieut.
Officer detailed to take the Summary
of Evidence .

In the Field
14 Aug 44.

NOTICE

To: F-87233 Pte John KYNOCK
H-19189 Pte James Nelson FLEMING

TAKE NOTICE that, pursuant to RP 76, Sgt Allen Austin MOONIE will give evidence at your forthcoming trial by Court Martial to the effect that, upon making a check of the stores of Stanley Barracks kitchen, where he is detailed for duty, he found that there were only two tins of Hanson's Double Crown brand plums, marked HFG-6H and HFG-7H, whereas there should have been at least two more tins on hand.

M. J. Conroy, Lt

.....
Officer detailed to take the Summary

In the case of F.87233 Pte John KYNOCK and H.19189 Pte James Nelson FLEMING, attached to No. 1 Canadian Base School of Cookery, 1 Cdn Base Rft Group.

LIST OF WITNESSES

- (1) D.122916 Pte J.D. AUSTIN
- (2) B.100581 Sgt Wharles William ABREY
- (3) L.7462 Sgt Allan Austin MOONIE
- (4) B.65525 CQMS Edward William JOHNSTON

LIST OF EXHIBITS

Two tins of plums (Hanson's Double Crown Brand)
One tin of apricot jam (St. Erasmo Brand)

NOTICE

TO: F.87233 Pte John KYNOCK
H.19189 Pte James ^{Nelson} Fleming FLEMING *eu*

TAKE NOTICE that, pursuant to RP 16, you are charged jointly with offences under AA Sec 18 (4) and Sec 40. You may claim, either by notice to the Convening authority or when arraigned before the Court, to be tried separately on the ground that the evidence of one of you will be material to the defence of the other.

J. H. Honey, Lt
Officer detailed to take the
Summary.

I, F.87233, Pte John KYNCK, hereby make application to have an Officer appointed to defend me at my forthcoming trial by Court-Martial.

July 28, 1944

J. Kynock

I, H.19189 Pte James Nelson FLEMING, hereby make application to have an Officer appointed to defend me at my forthcoming trial by Court - Martial.

July 28, 1944

J. Fleming

I, F.87233, Pte John KYNCK, hereby acknowledge the receipt, from the officer detailed to take the Summary, of a copy of the Summary of Evidence in my case and of the Charge Sheet and Notices pursuant to RP, 16. and 76.

Signed this 28th day of July, 1944.

J. Kynock

I, H.19189 Pte James Nelson FLEMING, hereby acknowledge the receipt, from the officer detailed to take the Summary, of a copy of the Summary of Evidence in my case and of the Charge Sheet and Notice pursuant to RP, 16. and 76.

Signed this 28th day of July, 1944.

J. Fleming

14 P.

O. H. M. S.

Gen. KYTE, C.T.

Correspondence to be PINNED here.

E-73888, Cnr. Kyrle, C.J.
1 C.A.R.U. 147

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this TWENTY-FIFTH day of SEPTEMBER, 1942

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of "C" GROUP, CARIBBEAN REINFORCEMENT UNITS, CANADIAN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified officer;~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if applicable

- ~~(I am unable to appoint:--~~
- ~~(1. Three Officers to form the Court.)~~
- ~~(2. A Field Officer as President.)~~

for the following reasons, namely:--

PROCEEDINGS REVIEWED

M. J. Robinson Capt
Reserve Officer (C.A.R.U.)
8 Oct 42

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, etc., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialed by him.

President.		
Rank.	Name.	Regiment.
MAJOR	F. J. SIMONS, OJA,	1 C.A.R.U.
Members.		
Rank.	Name.	Regiment.
MAJOR	A. M. DOUGLAS, MAJ,	1 C.A.R.U.
CAPTAIN	J. M. HUNT, OJA,	1 C.A.R.U.
LIEUT.	L. W. PEET, OJA, (Waiting Member)	1 C.A.R.U.

*Signed *[Signature]* Brigadier,
Commanding "C" Group, Can. Rein. Units.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-72888 GMR. LYTE, G.F. (R.O.A.), 1 C.O.A.R.U.	FIRST CHARGE A.A. Sec. 40	Not Guilty	Guilty with the exception of the words "with intent to commit any indecent act."	Confirmed M
	SECOND CHARGE A.A. Sec. 40	Not Guilty	Guilty with the exception of the words "thereby maliciously exposing himself."	
	See Charge Sheet Attached.		To undergo detention for 60 days 29/9/42 J/H	

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)) :-

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No sir

Answer (to be recorded on separate sheet if necessary) :-

(Signed) *J. Stewart* Brigadier, (Signed) *Hickman Major*
Commanding "C" Group Canadian Units
Concerning Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialed by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 28th - 29th day of September 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. B. Certificate of President as to proceedings.

I also certify that :-

- The members of the Court
 - The witnesses
 - The interpreter J.H.
 - The officers under instruction
- were duly sworn.

Signed this 29th day of September 1942.

Hickman Major
President of the Court Martial.

* See footnote (b) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. C. Certificate in case of death sentences.

Signed this 29th day of September 1942.

Hickman Major
President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. D. Certificate in case of death sentences.

(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 29th day of September 1942.

J. Stewart
Confirming Officer,
Commanding "C" Group,
Cdn. Reinforcement Units.

Promulgated and extracts taken in the case of *A. 73888 Gmr Lyte G.F.*
(a) (Dated) 2 Oct 1942 (Signed) *Hickman Major* COL
C.O. - I/CARU.

Promulgated and extracts taken in the case of
(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of
(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

B. J. Johnson
11 9 42

The accused, K.73888 Gunner KYTE, CAMERON JACKSON,
No.1 Canadian Artillery Reinforcement Unit, a soldier
of the Canadian Army Overseas, is charged with:

WHILE ON ACTIVE SERVICE,

First Charge
AA Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY
DISCIPLINE

in that he at Bordon, Hants, at or about 2230 hours
8 Sep 42, did assault W/60473 Hazel Lyon, A.T.S. of
A.T.S. Reception Camp, Silver Cottage, Bordon, with
intent to commit an indecent act.

Second Charge
AA Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY
DISCIPLINE

in that he at Bordon, Hants, at or about 2230 hours
8 Sep 42, did urinate on the street near the Fire
Station, thereby indecently exposing himself.

Dated at Bordon, Hants.,
this 15th day of
September, 1942.

T.H. MURCHAVE

(T.H. MURCHAVE) Colonel,
Commanding Officer,
No.1 Canadian Artillery Reinforcement Unit.
R.C.A. Canadian Army Overseas.

To be tried by Field General Court Martial

J. Stewart Brigadier.
Commanding "39 Group, Can. Reinf. Units.
(Convening Officer)

Bordon, Hants..
25 Sep 42.

MEDICAL OFFICER'S CERTIFICATEK.R. (CAN) PARA 887A
H. J. ...

I certify that I have, this morning, examined
 No K.73.887.GNR..KYTE...C.J.....
 of No. 1 Cdn. Arty. Holding Unit, and in my opinion
 he is ^{fit}~~unfit~~ to undergo Trial by Court Martial.

Station Bardon.....Date 28-9-42.....

H. J. ...

 Medical Officer
 No. 1 Cdn. Arty. Holding Unit.

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN) PARA 587

I certify that I have, this morning, examined
No K73888 924 W. York C.F......
of No. 1 Cdn. Arty. Holding Unit, and in my opinion
he is ^{fit} ~~unfit~~ to undergo Trial by Court Martial.

Station Borden.....

Date 29-9-42.....

Cum Comd.
CMTR. CAMC.....
Medical Officer
No. 1 Cdn. Arty. Holding Unit.

L. J. [Signature]

PROCEEDINGS OF FIELD GENERAL COURT MARTIAL

Held at BORDON, HANTS ON THE 28th DAY OF SEPTEMBER 1942 BY ORDER OF
BRIGADIER J.C.STEWART, D.S.O., COMMANDING "C" GROUP HEADQUARTERS,
CANADIAN REINFORCEMENT UNITS.

Trial of K-73888 Gnr. Cameron Jackson KYTE, No. 1 Canadian Artillery Reinforcement Unit, in
the Field 28 September 1942.

PRESIDENT:- Major F.J.Gilmour, R.C.A.
MEMBERS :- Major A.M.Douglas, R.C.A. - #2 C.A.R.U.
:- Capt. J.M.Brady, R.C.A. - #1 C.A.R.U.

The order convening the Court, the charge-sheet and the summary of evidence are laid
before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23 as amended by
Rules of Procedure 105 and 106.

PROSECUTOR:- Lieutenant N.H.Silverman, R.C.A. - No. 1 C.A.R.U.

DEFENDING OFFICER:- Lieutenant J.M.Policha, R.C.A. - No. 1 C.A.R.U.

The accused is brought before the Court.

The Medical Certificate is laid before the Court, signed by the President and marked
"A".

The order convening the Court is read, signed by the President, and attached to the
proceedings.

The names of the members and the President of the Court are read over in the hearing
of the accused, and they severally answer to their names.

Question by the Court: "Do you object to be tried by me as President, or by any of the
Officers whose names you have heard read over?"

Answer: "No, Sir."

The President and members of the Court are duly sworn.

Major G.G.Paul, K.O.R.C., under instruction, is duly sworn.

At 1450 hours, the trial commences.

Question by the Court: "Do you object to Bdr. Steel, J.M. acting as shorthand writer."

Answer: "No, Sir."

The shorthand writer is duly sworn.

The accused is arraigned upon the charge sheet in accordance with Es. P. 31 & 112.

The Court comply with Rule of Procedure 39(a).

The Prosecutor, with the permission of the Court, dispenses with an opening address
and calls his first witness.

FIRST WITNESS)
FOR THE) W/60473 Private Lyon, H., Driver, A.T.S. Reception Camp, Silverton Cottage
PROSECUTION:) Bordon, Hants, being duly sworn, is examined by the prosecutor.

Question No. 1 Will you tell the Court your name, number, and your unit?

Answer No. 1 "I am Pte. Lyon, H., W/60473, 20th Hants Coy. M.T."

Question No. 2 Pte. Lyon, would you tell the Court, in your own words and to the best of
your memory, the events which took place upon the evening of the 8 September.

Answer No. 2 I took the train from Liss at 10 o'clock. In the train was a Canadian sol-
dier and another got in at Longmoor.

Question No. 3 Do you recognize the accused?

Answer No. 3 Yes, that is he, who got on at Longmoor.

(continued on Sheet II)

FIRST WITNESS)
FOR THE)
PROSECUTION:)
(CONT'D))

Answer No. 3 (Cont'd)

"He got in at Longmoor, and when we got to Oakchanger, he said he would show me the way as I had not been on that train before. I said that he could come with me but we would have to hurry. We started off and we met two officers and asked them if we were going in the right ~~XXXX~~ direction. They said no, and told us the right way. Then we turned back and retraced our steps. We met the other Canadian soldier who had been on the train.

Question No. 4 "All this time, while you were walking, was the accused holding you?"

Answer No. 4. "He was holding my hand, which annoyed me, rather."

We met this other Canadian soldier, who had ~~XXXX~~ come after us because he had seen us going in the wrong direction. He came along for about 10 minutes and showed the way, then going on himself. We met two sentries, and asked them the quickest way, and shortly after came out near the married quarters.

Question No. 5. "During this time were you walking all the time?"

Answer No. 5. "We started off running, and then slowed down to a fast walk."

Question No. 6. "You say We started running. Do you mean both you and the soldier?"

Answer No. 6. "Yes."

When we came out at the married quarters, I knew where I was and I asked him to let go of my hand, otherwise I would go on alone. This, however, he did not do. So I hit his hand with my forage cap. This was the first time that he attacked me. When he got me back against a fence, I screamed aloud, and he covered my mouth with his hand. I managed to get my mouth free and talked to him and he seemed to calm down. After a bit we went on again. This time he was holding me by the wrist.

Question No. 7. Why did you go on with him, after this incident?"

Answer No. 7. "I could not get away from him this time. He was still holding me."

Question No. 8. What happened after that?

Answer No. 8. Then we came out onto the main road and turned down towards the fire station. After a little while he walked slower and then he stopped and urinated, and then he tried to attack me again.

Question No. 9. "Did you see him urinating?"

Answer No. 9 "No. I tried to turn away but he had me by the wrist." "I struggled with him and tried to talk to him but it was no use and then he got me back against a fence ~~XXXXXXXXXXXX~~ again. I screamed very loudly, at which he turned and ran away.

Question No. 10. "You state He got you back against a fence. Will you tell the Court what were his actions at that particular time?"

Answer No. 10. "He tried to pull my drawers down."

Question No. 11. After he ran away, what did you do?

Answer No. 11. "I ran up the street until I found a Provost Corporal and told him."

Question No. 12. About how long afterwards did you meet this Provost Corporal?

Answer No. 12. "About 10 minutes."

CROSS EXAMINED BY THE DEFENDING OFFICER

Question No. 13 "During your trip on the train with the accused, was there any conversation between the two of you?"

Answer No. 13. "No. He was talking to the other Canadian soldier"

Question No. 14. Did he speak to you at all?

FIRST WITNESS FOR
PROSECUTION (CONT'D)

Answer No. 14. "He tried to speak to me, but he was very drunk and I did not speak to him."

Question No. 15: "When you got out of the train at Oakhanger, did he offer to take you home?"

Answer No. 15: "He offered to come and I said "Yes if you hurry very much!"

Question No. 16: Do you remember which way you started out from the station?"

Answer No. 16. Yew. Towards Bordon, Station.

Question No. 17. Had you ever been at Oakhanger before?

Answer No. 17. "Never at night."

Question No. 18. Had you ever been there in the day time?

Answer No. 18. "I have driven past it."

Question No. 19. Did you realize at the time, that you were going the wrong way?

Answer No. 19. "No."

Q. #20. "Not till after you met the Canadian Officers?"

A. #20. "No."

Q. #21. "Was the accused holding on to your hand all the time?"

A. #21. "Yes."

Q. #22. "I believe you stated in your previous statement that it annoyed you to have him hold your hand. Was that right from the start?"

A. #22. "Yes."

Q. #23. "Did you complain to him?"

A. #23. "I took my hand away from him several times, but as he was not offensive in any other way I did not protest any more."

Q. #24. "Did you make any complaint to the officers about this."

A. #24. "No. I had no reason to."

Q. #25. "On your way back after you met the officers, you ran into this other Canadian soldier and he took you along the right way. The three of you walked together quite a distance. You were all walking. Did the accused hold on to your hand?"

A. #25. "I was in the middle and they both had me by the arm, one on each side."

Q. #26. "Have you any idea how far you walked?"

A. #26. "For about 10 minutes, or perhaps longer."

Q. #27. "Did this other soldier know the way?"

A. #27. "Oh Yes. He knew the way."

Q. #28. "When he left you, did he explain the way?"

A. #28. "Yes."

Q. # 29. "Before this other soldier left you, did the accused say anything to you about keeping on going with you?"

A. #29. "No."

Q. #30. "Did he ask if he could?"

A. #30. "No. He just started to take me along."

SHEET IV

- Q. #31 "After you left this other Canadian soldier, did you walk along the main road?"
- A. #31. "No. It was the short cut through."
- Q. #32. "What sort of a night was it? Dark or light?"
- A. #32. "I don't think it was very dark"
- Q. #33. "Was there any moon?"
- A. #33. "I cannot remember. It was fairly light. I think there was a moon."
- Q. #34. After this second soldier left you, did ~~XXXXXXXXXX~~ he continue to hold you by the hand?"
- A. #34. "Yes."
- Q. #35. "Did it still annoy you?"
- A. #35. "Yes."
- Q. #36. "You stated that you came to two sentries. Have you any idea where these two sentries were?"
- A. #36. "Yes. I cannot explain it, but I know where they were. They were in this camp."
- Q. #37. "Do you know the name of the camp?"
- A. #37. "No."
- Q. #38. "You stated that it annoyed you to have the accused hold your hand, all this while. Did you make any complaint to these sentries?"
- A. #38. "No. There would have been no use complaining, for I would have had to go on alone and he was quite harmless, merely annoying."
- Q. #39. "After you left these two sentries, how far did you go before you knew where you were?"
- A. #39. "Not far. For about 5 minutes."
- Q. #40. "Did he make any trouble other than holding your hand, up to that time?"
- A. #40. "No."
- Q. #41. "You stated that you got your bearings at the married quarters and that was the place he first attacked you. Up to that time, ~~XXXXXX~~ he had so held you by the hand. What led him to make any improper advances ~~XXXX~~ or attacks?"
- A. #41. "Because I hit him on the hands with my forage cap."
- Q. #42. "Why did you hit him on the hands?"
- A. #42. "Because I did not like a drunken man holding on to my hand."
- Q. #43. "Oh. So he was drunk?"
- A. #43. "Yes."
- Q. #44. "Did you realize that he had been drinking before this time?"
- A. #44. "Yes, he smelled of it."
- Q. #45. "In what manner did he attack you after you had hit him on the hands with the cap?"
- A. #45. "He flung me back against a fence. I was so confused that I do not know whether it was indecent or not. He had his arms holding me back against the fence."
- Q. #46. "Did he say anything to you?"
- A. #46. "Then he ~~shouted~~ ^{shouted} at me and suddenly flung me back against a fence and when I screamed he put his hand over my mouth."

(Continued on Sheet V)

SHEET V

- Q. #47. "Do you remember what he said to you?"
- A. #47. "No. I don't. I was so confused. He certainly wasn't playing "kiss in the ring".
- Q. #48. "What sort of a fence was it?"
- A. #48. "It was a plain wire fence."
- Q. #49. "Were you hurt at all?"
- A. #49. "No."
- Q. #50. "You say you let out a scream and he put his hand over your mouth?"
- A. #50. "Yes."
- Q. #51. "Was it very long?"
- A. #51. "I managed to get it free."
- Q. #52. "When he had his hand over your mouth, where did he have the other hand?"
- A. #52. "I don't know. I only know that we were struggling and I can't remember."
- Q. #53. "When you got his hand away from your mouth, what did you do?"
- A. #53. "I talked to him and he seemed to calm down."
- Q. #54. "What did you say to him?"
- A. #54. "I said that I should not have hit at him, and that I wanted to go on alone, and a lot more."
- Q. #55. "What did he say to that?"
- A. #55. "He didn't say anything. He seemed rather excited but got a bit calmer."
- Q. #56. "Were you there very long?"
- A. #57. "No. Not very long, but I can't tell. It seemed a long time. I suppose about 5 or 10 minutes."
- Q. #58. "When you started walking again, how did he act towards you?"
- A. #58. "He held my wrist."
- Q. #59. "Was he holding it tightly?"
- A. #59. "Yes."
- Q. #60. "Did it hurt?"
- A. #60. "No. But I could not get it free."
- Q. #61. "From the moment that you started walking again until the time you got to the main road, did anything happen?"
- A. #61. "No. I was talking to him, and when he would slow down, I would hurry him up, but I was frightened then."
- Q. #62. "On your trip to the main road, did you walk along by the married quarters?"
- A. #62. "No. We got through part of the wood. There are a few trees there."
- Q. #63. "When you got to the main road, how far did you walk before you stopped again?"
- A. #63. "Not quite to the Fire Station. About 100 yards before the Fire Station."
- Q. #64. "What side of the road were you on?"
- A. #64. "On the right hand side coming down."
- Q. #65. "Did he say anything to you when he stopped?"

(Continued on Sheet VI)

- A. #65. "Not when he stopped. Afterwards, he did, Yes."
- Q. #66. "How long after?"
- A. #66. "When he attacked me he talked a lot."
- Q. #67. "This first stop you made. Was that the time that he urinated?"
- A. #67. "Yes."
- Q. #68. "Did he say anything before he did that?"
- A. #68. "No."
- Q. #69. "Was he holding on to your hand all the time?"
- A. #69. "To my wrist, Yes."
- Q. #70. "Did he turn away from you?"
- A. #70. "No."
- Q. #71. "Was he facing you all the time?"
- A. #71. "We were turned left, side by side, and I managed to turn to one side but ~~NOX~~ I could not get free."
- Q. #72. "On which side of him were you walking?"
- A. #72. "I was by the road on his left."
- Q. #73. "Which way was he facing when he was urinating?"
- A. #74. "Facing towards the Fire Station."
- Q. #75. "You turned towards the side?"
- A. #75. "Yes."
- Q. #76. "Did you turn completely away?"
- A. #76. "No. I couldn't. He was holding me."
- Q. #77. "He was holding you by the wrist?"
- A. #77. "Yes. But I could not turn right around."
- Q. #78. "Did you see the actual process?"
- A. #78. "No. I did not look."
- Q. #79. "After he finished what did he do?"
- A. #79. "He tried to turn me towards him and he seemed very excited all of a sudden and talked a lot."
- Q. #80. "During the time that he was urinating, did you make any effort to pull away?"
- A. #80. "Yes, I tried to."
- Q. #81. "Were you struggling hard?"
- A. #81. "I was struggling hard, Yes."
- Q. #82. "You struggled. He turned towards you after he finished and made a grab at you. Was he exposed at the time?"
- A. #82. "Yes."
- Q. #83. "Are you definite about that point?"
- A. #83. "Yes."
- Q. #84. "How did he grab you?"

SHEET VII

- A. #84. "I cannot remember exact details. I know that we were struggling and he was trying to get me towards him but I can't remember."
- Q. #85. "Did he continue holding on to your wrist?"
- A. #85. "He had me and I could not get away or I would have run."
- Q. #86. "Did he put his other arm around you?"
- A. #86. "No. He was trying to get me against the fence."
- Q. #87. "What part of you was he holding?"
- A. #87. "I cannot remember. I just remember struggling with him."
- Q. #88. "Did he say anything?"
- A. #88. "Yes. He ~~XXXXXXXXXXXX~~ offered me money, and said he would be very careful, and a lot of other things."
- Q. #89. "Did he say what he wanted?"
- A. #89. "No. It was obvious."
- Q. #90. "You stated you were struggling with him. Did he have your back against a fence?"
- A. #90. "Yes, he did at the end. When he got me against the fence and when he was trying to get my knickers down when I gave that scream."
- Q. #91. "Where did he get you against the fence?"
- A. #91. "This was quite near to the Fire Station. Near the building."
- Q. #92. "Was he exposed all the time?"
- A. #92. "Yes."
- Q. #93. "What sort of a fence is there at the spot?"
- A. #93. "It is an ordinary wire fence."
- Q. #94. "It was right near the Fire Station?"
- A. #94. "Yes."
- Q. #95. "Was there any hedge there?"
- A. #95. "Yes, I think it is partly wire and partly hedge."
- Q. #96. "And ~~XXX~~ he ^{pushed} ~~XXXX~~ you against the wire part of the fence ~~XX~~ Was there any hedge there?"
- A. #96. "No. I do not think so."
- Q. #97. "You stated that it was an ordinary wire fence?"
- A. #97. "Yes."
- Q. #98. "Was it a barb wire fence?"
- A. #98. "It certainly was not a barb wire fence."
- Q. #99. "When he got you back against this fence, what did he do?"
- A. #99. "He tried to pull my knickers down."
- Q. #100. "Did he succeed?"
- A. #100. "He got them about half way down."
- Q. #101. "What were you doing all this time?"
- A. #101. "I was struggling with him, or trying to. I had struggled a good long time by this."

(Continued on Sheet VIII)

- Q. #102. "Where was his other arm?"
- A. #102. "I cannot remember. I was confused. I can not remember every detail, but I was pretty shocked at the time."
- Q. #103. "Certainly you can remember where he had his other arm."
- A. #103. "He had one hand sort of holding my back and the other was pulling my knickers down."
- Q. #104. "He was only holding on to you with one hand?"
- A. #104. "Yes."
- Q. #105. "Did he say anything then?"
- A. #105. "No."
- Q. #106. "Did you say anything?"
- A. #106. "I only screamed. It was too late to say anything."
- Q. #107. "But before you screamed."
- A. #107. "Yes. I said I would meet him tomorrow and tried to stop him. I said that if he let me go then, I would see him next day."
- Q. #108. "Did he say anything to that?"
- A. #108. "At first it seemed to work, but it didn't work. He said what time and then when I told him he said no."
- Q. #109. "Was this going on while you were struggling?"
- A. #109. "Yes. I was trying to calm him down."
- Q. #110. "Did he mention anything of where he was going ~~was~~ that night after he left you? Such as a dance or something?"
- A. #110. "No."
- Q. #111. "As far as you can remember, all the conversation you had with him was that you offered to meet with him the next night?"
- A. #111. "Yes."
- Q. #112. "You stated that when he tried to pull your knickers down you screamed. What did he do then?"
- A. #112. "He let me go."
- Q. #113. "And then what?"
- A. #113. "I ran."
- Q. #114. "What did he do?"
- A. #114. "He ran too."
- Q. #115. "Which way did he go?"
- A. #115. "In the opposite direction."
- Q. #116. "Which way did he go?"
- A. #116. "I ran up towards the Post Office and he ran the other way."
- Q. #117. "Which way is that?"
- A. #117. "Along the road by which we had come."
- Q. #118. "Do you mean by that that he ran back and retraced his steps?"
- A. #118. "Yes."

- Q. #119. "You ran for about ten minutes till you met the Canadian Provost?"
- A. #119. "Yes."
- Q. #120. "Where was he?"
- A. #120. "He was up near the Post Office."
- Q. #121. "On the same side of the street you were?"
- A. #121. "He was on a motor cycle."
- Q. #122. "Which one of you spoke first?"
- A. #122. "I did."
- Q. #123. "What did you tell him?"
- A. #123. "I said, can you help me because I've been attacked. I was a bit hysterical then."
- Q. #124. "Did he ask you if you knew who the attacker was?"
- A. #124. "Yes. He asked me all the questions."
- Q. #125. "Did you describe the attacker to him?"
- A. #125. "Yes."
- Q. #126. "Did you give the Corporal a name?"
- A. #126. "I gave what I thought was his name. Nelson. I had heard him tell the other soldier in the train."
- ~~XXXXXXXXXX~~
- Q. #127. "Did he tell the other soldier on the train that that was his name?"
- A. #127. "Yes."
- Q. #128. "Was it just one name? Was it a last name or a first name?"
- A. #128. "Just one name. I think it was meant to be a surname. It might have been Joe Nelson, I do not remember."
- Q. #129. "Is there any possibility that he might have been talking about someone else?"
- A. #129. "No, I do not think so. He was talking about himself the moment he got on the train."
- Q. #130. "Do you remember how much of the particulars you told Cpl. at that time outside of the fact that you were attacked?"
- A. #130. "No. I think he understood what I meant. It was pretty obvious what I meant. He just asked for my name and number and the rest."
- Q. #131. "Outside of the fact that you were attacked, did you tell him anything more?"
- A. #131. "No. Just that I was attacked. I was pretty upset and he knew what I meant."
- Q. #132. "Were you interviewed about this matter the following day?"
- A. #132. "Yes."
- Q. #133. "When you got to your quarters, did you meet anyone when you got in?"
- A. #133. "Yes. A L/Cpl."
- Q. #134. "What time did you get in?"
- A. #134. "About half past eleven."
- Q. #135. "What time were you supposed to be in?"
- A. #135. "Eleven o'clock."
- Q. #136. "Did you report the matter to her immediately you saw her?"

- A. #136. "Yes. I was upset and she wanted to know all about it. I told her when I came in."
- Q. #137. "Did you make any statement before she asked you what the matter was?"
- A. #137. "Yes. I told her immediately I came in."
- Q. #138. "You stated that you appeared upset and she asked you what the matter was."
- A. #138. "I was upset and before she said anything, I said I had been attacked and then she asked me all about it."
- Q. #139. "Did you give her the particulars of the attack?"
- A. #139. "Not very much, No."
- Q. #140. "Do you remember how much you told her?"
- A. #141. "No. I don't think I told her very much."
- Q. #142. "What you told her would be mainly that you were attacked?"
- A. #142. "Yes."

EXAMINED BY THE COURT

- Q. #143. "How old are you?"
- A. #143. "23 years"
- Q. #144. "You are attached to a Reception Camp in Bordon?" How long have you been attached?"
- A. #144. "About 8 months."
- Q. #145. "Getting off the train that night, you got off at Oakhanger Station. What station should you have got off at?"
- A. #146. "I got off at the right station, Oakhanger. The Guard told me it was."
- Q. #146. "That was your first ride on that Railway Train?"
- A. #146. "Yes."
- Q. #147. "Did you take that same train to commence your journey?"
- A. #147. "No. I went by bus."
- Q. #148. "You stated that the accused was quite harmless, merely annoying?"
- A. #148. "Yes."
- Q. #149. At what time was that?"
- A. #149. "Just after I got off the train."
- Q. #150. "Did your views, at any time, change?"
- A. #150. "No. not up to the actual moment."
- Q. #161. "On your way with the accused, you met different people. The same soldier who had been with you in the train. Did you have any cause to complain?"
- A. #151. "No."
- Q. #152. "Whom did you meet next?"
- A. #152. "Two sentries."
- Q. #153. "Up to that time, nothing had happened to cause you to complain?"
- A. #153. "No."
- Q. #154. "And then you met the two officers?"
- A. #154. "No. I saw the two officers when we went in the wrong direction."

- Q. #156. "Who were the first persons you saw?"
- A. #156. "Getting off the train, the first persons I saw, were the two officers. The next the Canadian soldier who had been in the compartment, and next the two sentries."
- Q. #156. "Between the time you left the soldier of the compartment, and the time you met the two sentries, did anything happen?"
- A. #156. "No."
- Q. #157. "Did it not seem rather foolish to be with a soldier who was drunk?"
- A. #157. "When we got in the train I edged away from him but he said he had the greatest respect for women and he seemed quite harmless. I thought it better than walking alone in that camp."

PROVISIONS OF R.P. 83(b) DISPENSED WITH BY THE COURT, THE WITNESS HAVING NO OBJECTION.

SECOND WITNESS)
FOR THE) W/45519 L/Cpl. E.M.ANGUS, 20th Hants M.T.Coy., A.T.S., being duly
PROSECUTION:) sworn, is examined by the Prosecutor.

- Q. #158. "Will you tell the Court your name, number, rank, and unit?"
- A. #158. "E.M.Angus, W/45519, L/Cpl. of the 20th Hants M.T.Coy, A.T.S."
- Q. #159. "Do you know W/60473 Pte. Hazle Lyon?"
- A. #159. "I do."
- Q. #160. "When, on the night of 8 September 1942, Pte. Lyon returned to her quarters, will you tell the Court anything you may be able to as to her condition?"
- A. #160. "She was distressed. Half-crying. When she got inside she burst out crying. I told her to tell me what had happened and she did. After that I advised her to go to bed and have a hot drink and I told her to report ~~it~~ it in the morning."

~~XXXXXXXXXX~~

EXAMINED BY THE DEPENDING OFFICER

- Q. # 161. "What was the state of her clothes when she came in?"
- A. #161. "I did not notice anything unusual."
- Q. #162. "What about her hair?"
- A. #162. "It was a bit untidy. She came in ~~without her cap~~ without her cap, but with it in her hand. I consider it usual."

~~XXXXXXXXXX~~

PROVISIONS OF R.P. 83(b) DISPENSED WITH BY THE COURT,
THE WITNESS HAVING NO OBJECTION.

THIRD WITNESS)
FOR THE) L/27628 L/Cpl. GRAHAM, G.N.R., #9 Provost Coy. Canadian Provost Corps,
PROSECUTION:) being duly sworn, is examined by the prosecutor.

- Q. #163. "Will you tell the Court your name, Number, rank, unit and the nature of your duties."
- A. #163. "L-27628 L/Cpl. Graham, G.N.R., of #9 Provost Company, Canadian Provost Corps. My duties are to patrol the towns designated to me and look after law and order amongst Canadian troops."
- Q. #164. "Where were you on duty on the night of 8 September 1942?"
- A. #164. "In Borden, Area."
- Q. #165. "Will you tell the Court in your own words what transpired at about - well late on the evening or night of 8 September."
- A. #165. "While on patrol on the Borden-Farnham Road just beside the Quebec Barrack entrance, a lady, Pte. Lyon, came running up the sidewalk."

(Continued on Sheet XII)

A. #165. (Cont'd)

" She was sobbing or something and in a very high state of nervousness as if suffering from shock. I asked her what troubled her and she stated that she had been attacked by a Canadian soldier. This was at about 1130 at night. She had been attacked by a Canadian soldier near the Fire Hall. I took her particulars and also asked for the name of the person who had attacked her. She said the name was J.Nielson. I took down all the particulars and got a description and tried to locate the soldier and then returned to my Company Office.

Q. # 166. "Did you recognise anyone here today as the party who came up to you that night?"

A. #166. "Yes Sir. I recognise Pte. Lyon as the lady who was here today."

CROSS EXAMINED BY THE DEPENDING OFFICER

Q. #167. "You stated that you asked Pte. Lyon what the trouble was. Did you speak first?"

A. #167. "Yes Sir."

Q. 168. "What particulars did she give you?"

A. #168. "I got her name, where she was stationed, what she was doing, .

Q. #169. "Did she mention anything about the nature of the attack?"

A. #170. "No, Sir. She mentioned that he had put his hand over her mouth to keep her from calling out."

Q. #171. "Was that all?"

A. #171. "Yes, Sir."

RE/EXAMINED BY THE PROSECUTOR

Q. #172. "This girl, who was running. Was she running up to you?"

A. #172. "Yes Sir, and I spoke to her, for it was very dark and she would not recognise me as a Provost."

RE/EXAMINED BY THE DEPENDING OFFICER

Q. #173. "How dark was it?"

A. #173. "I Cannot tell."

Q. #174. "Was there any moon showing?"

A. #174. "I could not say, Sir."

R. P. 83 (b) dispersed with.

FOURTH WITNESS)
FOR THE)
PROSECUTION:)

L-18392 Gnr. LeBoeuf, L.P., No. 1 Canadian Artillery Reinforcement unit, being duly sworn, is examined by the Prosecutor.

Q. #175. "Will you tell the Court your name, rank, Number, and present duties."

A. #175. "L/18392 Gnr. LeBoeuf, L.P., M.T.Section, No. 1 Canadian Artillery Reinforcement Unit.

Q. #176. "You have recently been transferred to the M.T.Section and are now on a course?"

A. #176. "Yes Sir."

Q. #177. "You recognise the accused?"

A. #177. "Yes, Sir."

Q. #178. "Tell the Court in your own words the general contents of a conversation which took place between yourself and the accused and one other individual, on 8 Sep.

A. #178. "I don't recall the date, but it was on a Tuesday night. After the Regimental Dance, I went up to the kitchen and I met Gnr. Zarn and Gnr. Rytz.

(Continued on Sheet XIII)

A. #174. " and we started talking about old times we have had in Calgary, and Gnr. Kyte (cont'd) said "by the way, I met a girl tonight, she was pretty nice. I met her on the train coming from Longmoor". "I would like to have made her." From there on I did not pay any attention, I was not interested.

Q. #179. "Approximately what time was this?"

A. #179. "About 11.45 p.m. right after the dance was over."

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EXAMINED BY THE DEPENDING OFFICER

Q. #180. "Did you know Gnr. Zarn and Gnr. Kyte before?"

A. #180. "Yes Sir. I met them in Calgary, but I did not recognise Gnr. Kyte until he spoke to me."

Q. #181. "And he was telling you about the nice girl he had met on the train?"

A. #181. "Yes."

Q. #182. "Did he say he got on at Longmoor?"

A. #182. "Yes Sir. He said he had got/on at Longmoor."

Q. #183. "Did he make any statement as to just what he did to this girl?"

A. #183. "No Sir, he did not"

Q. #184. "Did he make any statment as to what he wanted to do?"

A. #184. "He simply said that he would have liked to have made her."

Q. #185. "Were those his exact words?"

A. #185. "Yes, Sir."

Q. #186. "Did he mention anything about taking this girl to the dance that night?"

A. #186. "No, Sir. I did not hear him say that."

Q. #187. "Did he say anything about making improper advances to this girl?"

A. #187. "No Sir. He did not."

Q. #188. "Did he mention anything that would make you believe that he had been anything but proper to her?"

A. #188. "No, Sir."

EXAMINED BY THE COURT

Q. #189. "Can you describe the accused's condition that night?"

A. #189. "He had been drinking, Sir."

Q. #190. "What made you think that?"

A. #190. "You could smell it and he was ~~XXX~~ acting kinda peculiar."

PROVISIONS OF R.P. 83(b) DISPENS'D WITH BY THE COURT,
THE WITNESS HAVING NO OBJECTION.

FIFTH WITNESS)
FOR THE)
PROSECUTION:)

H-16836 Cpl. MCCAFFERY, C.J., #9 Provost Company, Canadian Provost Corps, Special Investigator, being duly sworn, is examined by the prosecutor.

Q. #191. "Tell the Court you Number, name, rank and unit."

A. #191. "I am H/16836 Cpl. McCaffery, C.J. Special Investigator for #9 Provost Company, Canadian Provost Corps."

SHEET XIV

Q. #192 "Is it correct that on the 9th September 1942 you were notified by your O.C. to investigate a certain occurrence in this area?"

A. #192. "Yes."

Q. #193. "Will you tell the Court, in your own words, how that investigation proceeded and what results you obtained from that investigation, also tell the Court of the report shown to you?"

A. #193. "At approximately 0930 hours on the morning of the 9th I was called to the Skipper's, I mean the Captain's office and he showed me a report submitted to him by L/Cpl. Graham. I read over this report and came down to the A.T.S. quarters, Silverton Lodge, in Bordon and contacted Hazle Lyon and asked her --

(AT THIS POINT THE COURT INTERVENED AND ENDEAVOURED TO DISPENSE WITH IRRELEVANT INFORMATION WHICH THE WITNESS FOUND IT DIFFICULT TO REFRAIN FROM VOLUNTEERING.)

Acting on information received, I contacted a man in No. 1 C.A.R.U. and had a line up, or identity parade. I got 14 men along with the accused, and Pte. Lyons put the finger on him, I mean she picked him out of the party, as the man who had attacked her on the night previous. I got a statement from the accused in my report book and turned the pages over to Lieut. N.H. Silverman, 1 C.A.R.U.

(THE WITNESS IS SHOWN SOME PAGES OF A NOTE BOOK AND IDENTIFIES THEM AS THOSE FROM HIS REPORT BOOK AND CONTAIN THE REPORT OR STATEMENT SIGNED BY THE ACCUSED.)

(THE WITNESS WAS THEN ASKED TO GIVE THE COURT THE CAUTION WHICH HE USED BEFORE TAKING A STATEMENT FROM THE ~~WITNESS~~ ACCUSED.)

CAUTION: "I have been cautioned by Cpl. McCaffery that anything I might say shall be taken down in writing and can be used as evidence against me. To show that I understand this caution, I sign my name."

The accused signed this caution. Then we got going on his movements the night previous. He left the barracks from approximately 1800 hours ---

(THE DEFENCE OBJECTS ON THE GROUNDS THAT THE ACCUSED WAS NOT PROPERLY WARNED BEFORE MAKING THE STATEMENT.)

EXAMINED BY DEFENDING OFFICER

Q. #194. "Where did you interview Gnr. Kyte?"

A. #194. "In the Guard House in a little room just round from the table in there."

Q. #195. "Was anyone else present?"

A. #195. "No, Sir."

Q. #196. "What was the first thing you told Gnr. Kyte when you went in there?"

A. #196. "I said that I was from the Special Investigation. I left the door open about a foot and a half. I said I have come to investigate a little matter last night with regard to your movements. I cautioned him as I have already said.

Q. #197. "You cautioned him before you asked him any questions?"

A. #197. "Yes Sir. We always do."

Q. #198. "What were the first questions you asked him?"

A. #198. "I asked him where he had been the night before and he told me he had gone down to a pub etc. according to the statement here."

Q. #199. "Did you ask him questions?"

A. #199. "Yes. One must ask questions."

Q. #200. "Was his statement in the nature of answers to your questions?"

A. #200. "Some were and some were not."

(Continued on Sheet XV)

- Q. #201. "You had the statement from the girl before this time?"
- A. #201. "Not a statement, but rather a report."
- Q. #202. "In asking questions of Gnr. Kyte, did you base them on the knowledge that you had of Miss Lyon's statement?"
- A. #202. "No, Sir. The main thing I was getting, was I just wanted a check on his movements on the night previous."
- Q. #203. "What led you to believe that Gnr. Kyte was the man?"
- A. #203. "I had a clue."
- Q. #204. "What was the nature of this clue?"
- A. #204. "After the man was described to me, and some of his friends had heard him make statements and after checking the guard down at B.O.W. near where the Longmoor train comes in and the statement of our own L/Cpl. Graham, I was quite sure that I was talking to the right man."
- Q. #205. "During your questioning of Gnr. Kyte, did he, at any time, ask why you were asking him these questions?"
- A. #206. "No. He realized why I was there."
- Q. #207. "Did he ask you why you were questioning him?"
- A. #207. "No. Not that I remember."
- Q. #208. "Did he ask you what you were leading up to in your questioning?"
- A. #208. "Naturally. They all do that."
- Q. #209. "Then he did ask you?"
- A. #209. "No Sir. He did not ---- He might have asked it."
- Q. #210. "Was he unwilling to answer questions?"
- A. #210. "No, Sir. We talked quite freely."
- Q. #211. "Did you, at any time during your questioning, tell him that you were trying to help him out?"
- A. #211. "No, Sir."
- Q. #212. "Did you, at any time, state that, being a Canadian yourself, you would not like to see any other hot blooded Canadian in trouble?"
- A. #212. "No, Sir."
- Q. #213. "Did you, at any time, tell the accused that if it would be somebody else questioning him it would be a bit different, leading him to believe that it would be a bit harder on him?"
- A. #213. "No, Sir."
- Q. #214. "Did you ask him any questions?"
- A. #214. "Yes Sir. I asked him at least one question."
- Q. #215. "Did you ask him any questions on matters that he had not mentioned?"
- A. #215. "Yes Sir, I believe that I did. ----- I know I did."
- Q. #216. "You said that you cautioned the man before he said anything?"
- A. #216. "Right Sir."
- Q. #217. "You read out that caution, and he signed it then?"
- A. #217. "Yes Sir."

Q. #216. "He signed that ~~XXXXXXXX~~ caution before he made any statement whatsoever?"

A. #216. "Yes Sir."

Q. #219. "Did you continue to ~~ask~~ question him after he had signed?"

A. #219. "Yes."

~~XXXXXXXXXX~~

EXAMINED BY THE COURT

Q. #220. "Did you advise him in any way, to make a statement?"

A. #220. "I just told him to tell the truth."

Q. #221. "Did you suggest that it would be any better for him to make a statement?"

A. #221. "I told him it would be better to get it off his chest; get it off his mind."

Q. #222. "Did you suggest it would be to his advantage?"

A. #222. "No, Sir."

Q. #223. "Did you suggest it would save him from getting in any further trouble or make it easier for him."

A. #223. "No, Sir."

RE/EXAMINED BY DEFENCE

Q. #224. "Knowing what was in the statement from the girl, did you ask the accused any questions; asking them, knowing what she had said?"

A. #224. "At the time of the interview with the accused, I did not have Pte. Lyon's statement. All I had in the morning was a brief outline of the case and a description."

Q. #225. "Did she tell you what happened?"

A. #225. "I knew what had happened, for I had the report from L/Cpl. Graham."

Q. #226. "Did you know any incidents of the attack?"

A. #226. "No, Sir. I did not know any details."

Q. #227. "You mean that when you first interviewed her, you did not obtain any information from her?"

A. #227. "I asked her how serious it was, and she told me little things that had happened, but I did not get a written statement from her."

Q. #228. "She gave you a few hints as to what had happened when first you interviewed her?"

A. #228. "Yes, a few vague hints. My main thing, before I got any statement from the girl, was to get the man."

Q. #229. "Did you ask any questions of the accused basing them on what you had learned from the girl?"

A. #229. "I do not remember asking any other questions."

Q. #230. "This statement you have. Is that Gunner Eyte's own words just ~~in~~ the way he said them?"

A. #230. "Just the way he spoke to me, except for a few words."

Q. #231. "He gave you the statement and you wrote it down?"

A. #231. "Yes Sir."

Q. #232. "Did you ask questions and when he answered you, put them down in your own words to form a statement?"

A. #232. "No, Sir."

THE ACCUSED APPLIES TO GIVE EVIDENCE AS TO THE MANNER IN WHICH THIS STATEMENT WAS GIVEN AND WISHES TO GIVE IT ON OATH.

The Accused K-73886 Gunner C.J. Kyte, #1 C.A.R.U., being duly sworn, is examined by the Defending Officer.

- Q. #233. "When Cpl. McCaffery was questioning you, did you know who he was?"
- A. #233. "Yes Sir."
- Q. #234. "Before he questioned you did he warn you in the manner in which he states?"
- A. #234. "No, Sir."
- Q. #235. "What was the first question he asked you?"
- A. #235. "He asked me my name and my number."
- Q. #236. "Did he ask you about what you did on the previous night?"
- A. #236. "Yes Sir."
- Q. #237. "Did he ask you many questions?"
- A. #237. "Yes Sir."
- Q. #238. "This statement that is in question. Is that your own statement?"
- A. #238. "No, Sir."
- Q. #239. "How was it given?"
- A. #239. "As answers to a series of questions."
- Q. #240. "Did he tell you, at any time, that he had had a statement from the girl?"
- A. #240. "Yes, Sir."
- Q. #241. "Did he ask you any questions and also state what the girl had said about that?"
- A. #241. "Yes, Sir."
- Q. #242. "Did he, at any time, tell you that he was trying to help you out?"
- A. #242. "Indirectly, Sir."
- Q. #243. "Explain that."
- A. #244. "He did not use those words, but he led me to understand that even though it was his duty to check up on these things, that he was sympathetic to me."
- Q. #245. "Did he at any time, make a statement that he was trying to make it easier for you?"
- A. #245. "Yes Sir."
- Q. #246. "Did he state that he did not like to see Canadians in trouble?"
- A. #246. "Yes, Sir. He said 'I know how it is with young hot-blooded Canadians who come over here and get into trouble and I don't want this to happen to you if I can help you.'" He did not say anything about making a statement but kept on asking questions until he was satisfied. He asked me to sign this and read a little bit "knowing that I understand it to be the truth, and had me sign it. Then on the previous page he wrote a warning, read it over to me, asking me to read it and sign it, which I did."
- Q. #247. "You say he wrote this warning on what sheet?"
- A. #247. "On the sheet preceding the first page of the series of ~~ANSWERS~~ answers."
- Q. #248. "Did your statement immediately follow this warning?"
- A. #248. "There was a little space at the bottom of the warning. My statement started on the next page."

EXAMINED BY THE PROSECUTOR

- Q. #249. "Why did you sign the statement?"
 A. #249. "I was asked to."
 Q. #250. "Do you always do what you are asked to?"
 A. #250. "When the person who asked me to, knows best."
 Q. #251. "May I suggest that you also made the statement as well?"
 A. #251. "You may suggest it but it is not so."

CPL. MCCAFFERY IS RECALLED, (ALREADY SWORN) AND IS EXAMINED BY THE COURT.

- Q. #252. "You have heard the witness state that the caution was not read out to him nor signed until after he had signed the statement. What have you to say?"
 A. #252. "I say that that was the first thing I did when I went to the table - was to make out a warning."

THE COURT ADJOURNS AT 1800 HOURS UNTIL 0945 HOURS 29 SEPTEMBER 1942.

THE COURT ASSEMBLES AT 0945 HOURS 29 SEPTEMBER 1942. AND CLOSES TO CONSIDER THE ADMISSIBILITY OF THE STATEMENT IN QUESTION, IN EVIDENCE.

THE COURT OPENS AT 1125 HOURS

THE COURT :-

affirmatively
 From the ^{Manual} ~~matter~~ and circumstances surrounding the taking of the alleged confession, the Court is in some doubt as to whether the prosecution has ~~practically~~ established that ~~it~~ was free and voluntary. Rule 7 on Page 92 of the Manual of Military Law was violated. In his evidence Cpl. McCaffery said that the statement was in the form of answers to his questions and some of the statement was not and went on to say "one must ask questions". He was then asked, "did you ask him questions on anything that he did not mention", and the answer was "Yes Sir, I believe that I did."
 Then too, there is also some doubt in the minds of the Court whether the certificate signed by the accused admitting that he had been cautioned was read to him and signed by him before or after he had made the statement. This certificate is on a separate sheet of paper, and although in sequence of pages it may have preceded the statement itself, any doubt could have been avoided ~~if~~ the certificate had appeared at the commencement and on the same sheet of paper on which the statement of the accused began.
 Then too, from the rather positive and somewhat domineering manner in which the Cpl. of the Provost gave evidence, the Court are inclined to believe that he might and no doubt would be more domineering in ~~putting the statement down~~ obtaining the statement in question.
 Under the circumstances in which it was obtained, and not being satisfied that the statement was free and voluntary, it is excluded.

PROSECUTOR:- THE PROSECUTOR REQUESTED THAT CPL. MCCAFFERY BE ALLOWED TO TAKE THE STAND AND GIVE EVIDENCE AS TO ~~THE RESULTS OBTAINED FROM HIS INVESTIGATION OF THE CASE.~~ *what the accused had said when getting the stand.*
 THE COURT RULED THAT IN VIEW OF THE FACT THAT THE STATEMENT WAS EXCLUDED IT WOULD NOT BE CONSTANT TO ALLOW THIS EVIDENCE TO BE BROUGHT OUT.

THE PROSECUTION IS CLOSED

THE ACCUSED IS NOTIFIED OF HIS RIGHTS IN ACCORDANCE WITH R.P. 40(a) and Note 2 *Page 644*
 THE MANUAL.

THE ACCUSED IS QUESTIONED BY THE COURT

- Q. #253. "Do you wish to give evidence yourself, as a witness?"
 A. #253. "Yes, Sir."
 Q. #254. "Do you intend to call any other witness in your defence?"
 A. #254. "Yes Sir."

Q. #255. "Are they witnesses as to character only?"

A. #255. "No, Sir."

FIRST WITNESS }
FOR THE }
DEFENCE }

The Accused, K-73888 GUNNER CAMERON J. KYTE, No. 1 Canadian Artillery Reinforcement Unit, being duly sworn, is examined by the Defending Officer.

Q. #256. "What is your number, name and rank?"

A. #256. "K-73888 Kyte, Cameron Jackson. Gunner, Sir."

Q. #257. "Do you remember the night of 8 September 1942?"

A. #257. "Yes Sir."

Q. #258. "Where were you that evening?"

A. #258. "Whitehill and Woolmer, and some village ~~XXXXX~~ near Woolmer which I have found since to be Longmoor."

Q. #259. "How long did you spend at Whitehill?"

A. #259. "I am not certain. About an hour."

Q. #260. "Where did you go from Whitehill?"

A. #260. "I went to the Woolmer Hotel."

Q. #261. "What did you do there?"

A. #261. "I went in to the bar room and drank until very nearly closing time."

Q. #262. "Where did you go from there?"

A. #262. "Longmoor, Sir."

Q. #263. "Why did you go to Longmoor?"

A. #263. "I asked outside of the Inn at Woolmer as to the bus going back to Bordon. A soldier told me they were going to the train or near the depot where I could get a train to Bordon, and they gave me a ride in a truck."

Q. #264. "Who did you see when you got on the train?"

A. #264. "I saw 6 or 8 soldiers when I first got on. I asked one of them about the conductor; I did not know it was a free train. There was no room to sit down and I went into the next compartment and there was one soldier and a lady there."

Q. #265. "Will you tell the Court what happened on your trip on the train?"

A. #265. "There was a very choppy conversation between the three of us."

Q. #266. "Did you speak to the girl?"

A. #266. "Yes Sir."

Q. #267. "Did she answer?"

A. #267. "Yes Sir."

Q. #268. "Did you at any time on the train, give anyone your name?"

A. #268. "No, Sir."

Q. #269. "Where did you get off the train?"

A. #269. "At Oakhanger, Sir."

Q. #270. "Who else got off?"

A. #270. "The lady and the soldier mentioned who were in the compartment also got off there."

- Q. #271. "What did you say to the girl when you got off the train?"
- A. #271. "I asked if I could accompany her home."
- Q. #272. "What did she say?"
- A. #272. "She said yes, but we would have to run part way for she was going to be late."
- Q. #273. "Tell the Court, in your own words, what happened next."
- A. #273. "We started up the road which we mutually believed to be the right road. We proceeded along this road for approximately 200 yards until we met two Canadian officers. We enquired from them the right road to Borden as we were not sure of the road. They told us that we were going the wrong way and we had to go back to the depot and take another road. So we retraced our steps ~~xxx~~ towards the depot and met the soldier who had been in the compartment on the train with us. He said he had noticed we had taken the wrong road and had been trying to catch us to put us right. Up to this time we had been running except for the moment we stopped to ask directions from the two officers. On meeting this other Canadian soldier we walked with him for 5 or 10 minutes - the three of us arm in arm. Thinking that maybe the other soldier was an acquaintance of the girl, I asked the girl if she would rather that I did not go along. She said "just suit yourself". The other soldier left us and we went on hand in hand."
- Q. #274. "What do you mean by the term "hand in hand"?"
- A. #274. "We were holding hands, Sir."
- Q. #275. "Were you holding hands before you met this second soldier?"
- A. #275. "Yes Sir."
- Q. #276. "Did she object to your holding her hand up to that time?"
- A. #276. "No, Sir. Shortly after having parted company with the other soldier we were stopped by two sentries."
- Q. #277. "Were you going along the main road?"
- A. #277. "No, Sir. It was not the main road, it was a short cut. The girl then asked the sentries ~~xxx~~ if they knew the right road ^{best} and the quickest to the Post Office. They directed us and we went on. Coming out on to a main road or a much better road, the girl said "I know where we are now."
- Q. #278. "Where were you at that time?"
- A. #279. "I have discovered since that we were at the corner of the married quarters."
- Q. #280. "What happened then?"
- A. #280. "The girl hit my hand with her hat."
- Q. #281. "Why did she do that?"
- A. #281. "I do not know Sir."
- Q. #282. "Did she appear angry?"
- A. #282. "Slightly, Sir."
- Q. #283. "What did you do when she hit your hand?"
- A. #283. "I turned towards her and put my other arm around her and asked her not to be like that." I asked her what she was angry about.
- Q. #284. "What else did you say to her?"
- A. #284. "That is all I said right then, Sir."
- Q. #285. "Did she say anything?"
- A. #285. "She gave quite a startling yell."
- Q. #286. "What did you do?"

- A. #286. "I put my hand over her mouth, Sir."
- Q. #287. "Did you keep your hand there?"
- A. #287. "No, Sir. Realizing what I had done, I removed my hand. It was more, a reaction to the yell when I had put my hand over her mouth."
- Q. #288. "Did she pull your hand away from her mouth?"
- A. #288. "No Sir."
- Q. #289. "Did you hold on there very long?"
- A. #289. "No Sir."
- Q. #290. "Did you make any improper advances to her ~~IX~~ at that time?"
- A. #290. "No, Sir."
- Q. #291. "How long did you stay there?"
- A. #291. "Just for a minute or two, Sir."
- Q. #292. "What did you do next?"
- A. #292. "We proceeded on along the road."
- Q. #293. "Did you talk to her?"
- A. #293. "Yes Sir."
- Q. #294. "Was she talking also?"
- A. #294. "Yes Sir. She said she was sorry she had struck me."
- Q. #295. "After you commenced walking again, did she appear annoyed or angry?"
- A. #295. "No, Sir."
- Q. #296. "Where did you go from there?"
- A. #296. "We walked along the road towards the main road that goes down to the Fire Hall."
- Q. #297. "Did you walk along the road that goes by the married quarters?"
- A. #297. "I am not too sure, where the married quarters run. We walked along a road towards the main road which leads to the Fire Station. We walked hand in hand till we came to the main road."
- Q. #298. "How did you walk when you got to the main road?"
- A. #298. "I had her right hand in my right hand and my left arm around her back."
- Q. #299. "Which side of you was she on?"
- A. #299. "My left, Sir."
- Q. #300. "How far down this main road did you walk?"
- A. #300. "About 2/3 of the way to the Fire Station."
- Q. #301. "Did she object to your having your arm around her?"
- A. #301. "No, Sir."
- Q. #302. "Were you talking to her all this time?"
- A. #302. "Yes Sir."
- Q. #303. "Did she talk back to you?"
- A. #303. "Yes Sir."
- Q. #304. "What sort of a conversation was it?"

- A. #306. "I was talking most of the time and telling her what a good guy I am and I mentioned what a nice girl she was the main part of the conversation."
- Q. #306. "Did you stop before you came to the Fire Station?"
- A. #306. "Yes Sir."
- Q. #307. "How far away from the Fire Station would that be?"
- A. #307. "About 50 or 75 yards."
- Q. #308. "Why did you stop?"
- A. #308. "I had to have a leak."
- Q. #309. "Did you say anything to her about that?"
- A. #309. "I told her that I had to have a leak."
- Q. #310. "Did she say anything to that?"
- A. #310. "No, Sir."
- Q. #311. "What did you do next?"
- A. #311. "I changed ~~xxx~~ my right hand into her left and turned my back and had a leak."
- Q. #312. "Did you turn your back to her?"
- A. #312. "Yes, Sir."
- Q. #313. "Did she make any attempt to get away?"
- A. #313. "No Sir, none."
- Q. #314. "What did you do when you had finished leaking?"
- A. #314. "I turned around and put my right arm around her and said let's you and I go to the dance."
- Q. #315. "Were you exposed at the time?"
- A. #315. "No Sir."
- Q. #316. "Did you button your trousers before you turned round?"
- A. #316. "Yes Sir."
- Q. #317. "What did you do when you turned round?"
- A. #317. "I put my right arm around her and asked her "Let's you and I go to the dance at No. 1 C.A.R.U.""
- Q. #318. "What did she say to that?"
- A. #318. "She said no. I have got to go home. I am late now."
- Q. #319. "What happened after that?"
- A. #319. "We started walking along. I asked her if she did not dance, and she said yes but she had to go. She said "I will see you tomorrow night and I said ~~XXXXXX~~ Oh Come on over, and I took her by the hand and tried to lead her across the street to No. 1 C.A.R.U. At this time we were right at the corner at the Fire Station. She said, "do you want me to scream again".
- Q. #320. "Did you have her against a fence, at that point?"
- A. #320. "No Sir."
- Q. #321. "Do you know what type of fence there is at the Fire Station?"
- A. #321. "I know now Sir. I have been past there in the past couple of weeks."
- Q. #322. "What type of fence is there from the corner of the Fire Station for about 100 yards up the way you came?"

- A. #322. "Right from the corner of the Fire Station for about 40 feet there is a hedge and then a picket gate; then some more hedge ~~xxxxxxx~~ for about 20 to 40 feet."
- Q. #323. "Is it a solid hedge fence along there?"
- A. #323. "Just for a short way."
- Q. #324. "Are there any ~~xxxxxxxxxxxxxxxxxxxx~~ openings in the hedge?"
- A. #324. "From the yard in the Fire Station, there are several ~~xxxxxx~~ openings in the hedge."
- Q. #325. "What type of fence is there in the openings?"
- A. #325. "Between these openings there is barbed wire in each opening."
- Q. #326. "Were there any wire in these openings that is not barbed wire?"
- A. #326. "There may be one strand?"
- Q. #327. "Is there barbed wire in these openings?"
- A. #327. "Yes Sir."
- Q. #328. "Coming back to just before you left her, what happened right at the corner?"
- A. #328. "She said "do you want me to scream again", and I did not take this very seriously and asked her again to come along and tried to lead her across the street. She said, "You have kept me late enough now, do not get me into any more trouble", and then she screamed."
- Q. #329. "What did you do when she screamed?"
- A. #329. "I let go of her hand."
- Q. #330. "What did she do?"
- A. #330. "She ran straight up the street towards the Post Office."
- Q. #331. "What did you do?"
- A. #331. "I came across to the St. Lucia Parade grounds, across the parade grounds and went to the gym to the dance."
- Q. #332. "During your walk from the station, did she, at any time, complain to any of the people you met about you holding on to her hand?"
- A. #332. "No, Sir."
- Q. #333. "Did you go to the dance that night?"
- A. #333. "Yes, Sir."
- Q. #334. "Who was the first person you spoke to when you got to the dance?"
- A. #334. "The first person I had any conversation with after I got to the dance was Gunner Zarn."
- Q. #335. "Did you know this Gunner Zarn?"
- A. #335. "Yes Sir."
- Q. #336. "How long have you known him?"
- A. #336. "8 years Sir."
- Q. #337. "About what time was it when you came to this dance?"
- A. #337. "It is difficult to recall, Sir. About 11 o'clock I think."
- Q. #338. "Did you do any dancing?"
- A. #338. "I had one dance Sir."
- Q. #339. "Did you talk very much with this Gnr. Zarn, at the dance?"

- A. #339. "No, not very much."
- Q. #340. "What did you do after the dance?"
- A. #340. "I went to the St. Lucia Gunners' kitchen."
- Q. #341. "Did you go alone?"
- A. #341. "No, I walked back with Gunner Zarn."
- Q. #342. "Why did you go there?"
- A. #342. "To get something to eat."
- Q. #343. "Who did you meet when you came to the kitchen?"
- A. #343. "L/Bdr. LeBoeuf."
- Q. #344. "Did you speak to him?"
- A. #344. "Yes Sir."
- Q. #345. "Did Gnr. Zarn speak to him?"
- A. #345. "Yes Sir."
- Q. #346. "What were you talking about?"
- A. #346. "We talked about Calgary for a minute or two."
- Q. #347. "Did you know L/Bdr. LeBoeuf before?"
- A. #347. "Just to see him."
- Q. #348. "Was there anybody else near you?"
- A. #348. "There were others in the kitchen, Sir."
- Q. #349. "Was there anybody else taking part in the conversation?"
- A. #349. "No Sir."
- Q. #350. "What else did you say during the conversation?"
- A. #350. "I went on to tell them about going home with this girl on the train and walking home with her. I told them that I had met the girl on the train and walked home with her and mentioned that I had to run part way and I mentioned about the incident when she screamed and I put my hand over her mouth, and about trying to get her to come to the dance with me."
- Q. #351. "Did Gunner Zarn say anything to you?"
- A. #351. "Yes Sir, he did ~~it~~ ^{it}."
- Q. #352. "What did he say?"
- A. #352. "He asked me if I tried to make her ~~it~~ ^{it}."
- Q. #353. "What did you say?"
- A. #353. "I said no, definitely not, but I would like to have tried to make her. He kidded me a little about it. That was about all of our conversation."
- Q. #354. "What else did he say?"
- A. #354. "He did ask, in a joking manner, if I had or had not laid a hand on her."
- Q. #355. "What do you mean by 'laying a hand on her'?"
- A. #355. "I took it that he meant 'made any approaches towards her towards making her.'"
- Q. #356. "Back by the Fire Station, did you make any improper advances to her?"
- A. #356. "No Sir."
- Q. #357. "Did you have your hand up her skirt?"

A. #357. "No, Sir."

Q. #358. "Did you try to pull her drawers down?"

A. #358. "No, Sir."

Q. #359. "Did you offer ~~XXXXX~~ her any money?"

A. #359. "No, Sir."

EXAMINED BY THE COURT

Q. #360. "Did you promise to be careful?"

A. #360. "No, Sir."

CROSS/EXAMINED BY THE PROSECUTOR

Q. #361. "You stated, on the examination of Lieut. Policha, that you proceeded ~~XX~~ on the evening in question to Whitehill, to a Pub?"

A. #361. "Yes Sir."

Q. #362. "How much did you have to drink, there?"

A. #362. "Two double whiskies, and one or two small beers as a chaser."

Q. #363. "Two or three?"

A. #363. "Just two."

Q. #364. "Then you proceeded to Woolmer to a Pub, staying there until approximately 9.45. How much did you have to drink there?"

A. #364. "I had several double whiskies, there, about three, I think, and three rums and gins. Approximately six."

Q. #365. "Feeling pretty good?"

A. #365. "Yes Sir."

Q. #366. "Are you able to recollect in detail all your actions of that night?" I am suggesting to you that according to your testimony you have a fairly fine memory for detail as to what you did do and what you did not do. I suggest that a total of 5 double whiskies and about 3 rum and gin followed by a beer with each one, that that would tend to make your memory rather hazy."

A. #366. "For a time, yes, Sir."

Q. #367. "This was at 10.00 o'clock in the evening?"

A. #367. "Yes Sir."

Q. #368. "Being well filled up with liquor, you proceeded on the train where you met this girl and another soldier, proceeded to walk towards Bordon, and according to your admission, held on to her hand, and at times even put your arm around her, all the way, with perhaps an interval? Is that correct?"

A. #368. "Quite correct Sir."

Q. #369. "I am suggesting that, except for a period of a moment when you may have stopped or the girl may have stopped to ask directions, I am suggesting that according to your own evidence you, at all times, had your arm around the girl or were holding her by the hand."

A. #369. "Yes Sir, including the time we stopped to ask directions."

Q. #370. "What did you do in civil life?"

A. #370. "I am a Rodeo Contestant, Sir."

Q. #371. "In other words, Life in the Open. You work hard and play hard.?"

A. #371. "Don't work very hard."

- Q. #372. "You are not a weakling?"
- A. #372. "No, Sir."
- Q. #373. "Being a Rodeo Contestant, you are exceptionally strong in the hands and arms. You are definitely more strong in the arms and shoulders than, say, a clerk?"
- A. #373. "Yes, I guess I would be, Sir."
- Q. #374. "When you grasp something, I suggest it is not probable that you would grasp it limply?"
- A. #374. "Some of the strongest men have gentle touches."
- Q. #375. "During your conversatio with this girl, while you were telling her what a great BWY you were, in your own words, what was the purpose of this build-up?"
- A. #375. "It was to get acquainted and createa friendship."
- Q. #376. "For the future or the immediate present?"
- A. #376. "For all times, for the future as well as the present."
- Q. #377. "May I suggest to you further that your conversation along these lines was what is called a 'build-up' preliminary to trying to make a girl."
- A. #377. "Some people might use that method of a build-up, I was not thinking of that."
- Q. #378. "You use the more direct method, do you?"
- A. #378. "No, Sir."
- Q. #379. "You stated that after you urinated, you put your arm around her and asked her to go to the dance. Correct?"
- A. #379. "Correct."
- Q. #380. "How far away from you was she when you put your arm around her?"
- A. #380. "No more than the distance of one bent arm."
- Q. #381. "Were you trying to pull her closer to you?"
- A. #381. "No, I proceeded at the same time, ~~to~~ to walk along the road, and she went, according to her in Court."
- Q. #382. "I am suggesting to you that you put your arm around her with the intention of drawing her closer to you, or even further, that you even felt like kissing her, or caressing her, or something of that nature?"
- A. #382. "I did not think it to be Sir."
- Q. #383. "Do you mean to suggest to me that after ~~building yourself up~~ building yourself up to a girl, putting your arm around her, asking her to go out with you, that you had no thought of anything more?"
- A. #383. "Not so far as that evening was concerned."
- Q. #384. "I suggest you are a very abnormal individual."
- A. #384. "I probably am."
- Q. #385. "You stated that immediately prior to urinating, you transferred her right hand to your left hand and turned away from her and proceeded to unbutton your pants. Correct?"
- A. #385. "Correct, Sir."
- Q. #386. "Have much difficulty unbuttoning your pants?"
- A. #386. "No Sir."
- Q. #387. "The effects of the drink beginning to wear off?"
- A. #387. "Certain~~ly~~ amount, after walking that far." (Continued on Sheet XXVII)

- Q. #388. "Have you always found it easy to fasten and unbutton pants with one hand?"
 A. #388. "Yes, Sir."
 Q. #389. "All this time holding on to the girl?"
 A. #389. "Holding on to her hand"
 Q. #390. "Why were you holding on to her hand?"
 A. #390. "There was no reason, to let go of her and one likes to hold on to a girl's hand."
 Q. #391. "Why did you run away after she screamed the second time?"
 A. #391. "It was rather startling, and I did not run very far. Just across the road."
 Q. #392. "Because you had been doing something that the scream interrupted?"
 A. #392. "Most any scream is startling under any circumstances."
 Q. #393. "Did not the girl say, "do you want me to scream"?"
 A. #393. "She did but I took it rather lightly."
 Q. #394. "And went ahead with what you were trying to do?"
 A. #394. "Trying to lead her across to the dance" *XX*
 Q. #395. "Against her will?"
 A. #395. "Seemingly."
 Q. #396. "To your knowledge, why did the girl ask you "Do you want me to scream"?"
 A. #396. "Probably to make it more definite that she did not want to go to the dance."
 Q. #397. "Are you suggesting, that because a girl does not want to go to a dance that she is going to scream?"
 A. #397. "This one did."

PROVISIONS OF R.F. 83(b) DISPENSED WITH BY THE COURT
 THE WITNESS HAVING NO OBJECTION.

SECOND WITNESS)
 FOR THE)
 DEFENCE)

M-50118 Gunner ZARN, A.J., No. 1 Canadian Artillery Reinforcement
 Unit, being duly sworn, is examined by the Defending Officer.

- Q. #398. "What is your name, number and rank?"
 A. #398. "Zarn, A.J., M/50118, Gunner."
 Q. #399. "Do you know the accused, Gunner Kyte?"
 A. #399. "Yes, Sir."
 Q. #400. "How long have you known him?"
 A. #400. "Nine or Ten years."
 Q. #401. "Do you remember the night of 8 September 1942."
 A. #401. "Yes Sir."
 Q. #402. "Do you remember seeing Gun. Kyte that night?"
 A. #402. "Yes".
 Q. #403. "Where did you see him?"
 A. #403. "In the Gunners' Dance at No. 1 C.A.R.U., Sir."
 Q. #404. "Did you come to the dance together?"
 A. #404. "No. Sir."

(Continued on Sheet XXVIII)

SHEET XXVIII

- Q. #406. "Do you remember what time Mr. Kyte arrived?"
- A. #406. "Approximately 2245 hours, Sir."
- Q. #406. "Did he speak to you when he came in?"
- A. #406. "Yes Sir."
- Q. #407. "What did he say?"
- A. #407. "He wanted to know how the dance was etcetera."
- Q. #408. "Did you notice whether he danced that night?"
- A. #408. "Yes. He had two dances."
- Q. #409. "What did you do after the dance?"
- A. #409. "I went out to the trucks to see a girl there, and then came back and met Gunner Kyte at the door way ~~xxx~~ to the hall. We went then to the Gunners' Mess, St. Lucia. There we met L/Bdr. Le Boeuf. We started to talk of Calgary and Canada."
- Q. #410. "Was there anybody else in on the conversation?"
- A. #410. "No, Sir. Just the three of us."
- Q. #411. "Did you know L/Bdr. Leboeuf before this?"
- A. #411. "Yes Sir."
- Q. #412. "Had you known him in Canada?"
- A. #412. "Yes Sir."
- Q. #413. "How long did you talk about Calgary and Canada."
- A. #413. "Just a few minutes about Canada."
- Q. #414. "What happened next?"
- A. #414. "Then Kyte told us about meeting a girl earlier in the evening coming down on the train. He said he met a girl on the train coming home and had come from Borden Station with her. They got off the train and he started to walk home with her. He was holding her hand. They walked a piece and they were walking arm in arm. There was nothing more said but they walked a piece up the road and he had his arm around her and she yelled and he put his hand over her mouth. Then they got along again and they got out in front here and he asked her if she wanted to come to the dance. She said no, she had to go in, she was late. So he tried to coax her to come. Then she yelled again and ran up the street. That's all he said for a while until I started questioning him as to what ~~xxx~~ he had done with her. I asked him if he had made her or anything like that and he said No I did not, but I would like to have tried to make her. That was all that was said that night."
- Q. #415. "Did you ask him anything else?"
- A. #415. "No, Sir."
- Q. #417. "Was L/Bdr. LeBoeuf there at the time?"
- A. #417. "Yes Sir."
- Q. #418. "Was he listening to the conversation?"
- A. #418. "I do not know. He was there for the first part."
- Q. #419. "Did he mention ~~xxx~~ whether he had ~~made~~ any improper advances to the girl?"
- A. #419. "No, Sir."
- Q. #420. "Did you ask whether he had?"
- A. #420. "Yes Sir."
- Q. #420. "What did he say to that?"

A. #420. "He said no, but that he would like to have tried."

Q. #421. "Did you question him any more about that?"

A. #421. "No, Sir."

CROSS/EXAMINED BY THE PROSECUTOR

Q. #422. "Eam, how long have you known Gunner Kyte?"

A. #422. "Nine or ten years ~~IX~~ "

Q. #423. "Back in Calgary?"

A. #423. "Yes Sir."

Q. #424. "Very close pals?"

A. #424. "Not very close. I saw him about once a year at the Stampede. Never went around with him."

Q. #425. "You called him a close friend?"

A. #425. "Not a close friend. Just a pal."

EXAMINED BY THE COURT

Q. #426. "What communication have you had with the accused since the ~~XXXXXX~~ events of the case?"

A. #426. "None whatever, Sir."

THE PROSECUTING OFFICER SUGGESTED THAT THE WITNESS IS NOW A REGIMENTAL POLICEMAN THE ANSWER TO WHICH, THE WITNESS STATED THAT HE, AS AN R.P. HAD NEVER ESCORTED THE ACCUSED SINCE THE ACCUSED HAS BEEN IN THE GUARD ROOM ON THIS CHARGE.

THE PROVISIONS OF R.P. 83(b) DISPENSED WITH BY THE COURT
THE WITNESS HAVING NO OBJECTION.

ADDRESS OF DEFENDING OFFICER

In connection with this first charge there seems to be two stories. One by the complainant Pte. Lyon, and the other by the accused, Gun. Kyte, both stories are conflicting. Taking into consideration the story of Pte. Lyon first; there were no other witnesses to the alleged attack and no charge of this nature. The complainant statement for a charge must be corroborated. *Ed. H.*

PRESIDENT:- Are you submitting authorities for that statement?
Defence: - I am unable to do so at the moment.

Starting with the trip from the station, the girl claims that she was annoyed by the fact that the accused held on to her hand. She had ample opportunity to complain to any of the people that she met after that, to the effect that this man was annoying her. She admits telling this man that he could go with her. Apparently had no objection to his company. She states she noticed that he had been drinking, but in spite of that she allowed him to accompany her. At the first stop where she alleged the attack was made, when they were at the married quarters, she states that he grasped her and tried to pull her to him. She made no statement to the effect that he made improper advances. She did not state that his hands were ~~xxx~~ anywhere but around her arms. They were in the vicinity of the married quarters and if this man had been very repulsive, to her or had acted indecently to her, she could surely have made a complaint at the married quarters. This she did not do. Further on, on the road to the Fire Station, she states he stopped to urinate when she tried to turn away from him but found it hard because he was holding on to her hand. I submit that the mere ~~xxxx~~ fact that someone is holding on to your hand will not prevent you from turning around. In the struggle further down the road she claims she was bent back against a fence; a wire fence. She states it was an ordinary wire fence and not a barbed wire fence. According to the statement of the accused, who had been by the spot recently and had taken particular notice of the type of fence, there was it is submitted that the spaces between the hedge are filled with barbed wire fence, and had she been flung against the barbed wire fence she would be bound to have been cut or have her clothes torn. I cannot imagine anybody doing that without tearing clothes.

(Continued on Sheet XXX)

After the final scream, after which she states she ran up the street, she claimed that she made a complaint to the Provost Corporal and that she spoke to him first. The evidence of the Provost Corporal contradicts her. He states that he spoke to her first. He noticed her running up the street and he asked her what was the matter. She merely stated that she had been attacked. She gave him no particulars of the attack. I believe the Corporal mentioned that the accused had put his hand over her mouth. Outside of that, the Corporal knew nothing of the nature of the attack that had been done to the girl or how far the accused was supposed to have gone. Later on, when she came to her quarters, she was questioned by L/Cpl. Angus, who stated that she noticed that the girl appeared disturbed and was sobbing and asked her what the matter was. The girl, in her statement said that she volunteered a statement to the L/Cpl. L/Cpl. Angus also stated that the clothes of the girl did not appear to be ruffled or anything out of the ordinary. They were a bit ruffled, but nothing out of the ordinary. After this girl had been doing all this struggling, which she claims to have done against the fence, which, I submit, is a barbed wire fence, her clothes would have been disarranged, probably torn, and her hair would have been pretty well messed up. Again, she gave no particulars to L/Cpl. Angus that night as to the details of the attack, merely stating that she had been attacked. She gave a full statement of the incident the next day to Cpl. McCaffery.

In contradiction to this we have the story of the accused. He admits to holding on to the girl's hand ~~XXXXXXXXXX~~ he admits having his arm around her, but he also states that she did not seem to mind this. She made no complaint to the persons they met. He asked her before they left this second soldier who had shown them the right way, whether she still wanted him to come with her. She was agreeable. On the incident of the first attack, by the married quarters, the accused states that what he merely did was put his arm around her and told her "Aw, don't be like that". This was after the girl had hit his hand with her cap. There doesn't seem to have been anything out of the ordinary happen around there, except that he had his arms around her and perhaps gave her a little squeeze. She seemed quite willing to keep on going with him. She walked along and apparently they had a bit of a conversation. She stating that she was sorry she had hit him. The accused states that when they got to the main road they were walking along; he had hold of her right hand with his right hand and his left arm around her. She seemed quite willing to walk that way and made no objections; did not try to pull away. Now we come to the spot where the first stop along the main road, where the accused stopped to urinate. He had a call of nature come upon him and naturally he had to relieve himself. He states he told the girl that he had to have a leak. She said nothing to that. He claims that he turned his back to her. She states that she tried to turn away from him and I submit that if she tried to turn away from him she had every chance of doing so. She admits she did not say anything while he was urinating, and according to the statement of the accused she made no effort to pull away, just calmly standing by. She claims that when he turned around, he was exposed. He claims that he was not; that he had his trousers buttoned up. I believe that, in her statement she said that he was exposed during the entire struggle, ~~XXXXXXXXXXXXXXXXXXXX~~ during which I gather they probably travelled 75 to 100 yards. I cannot imagine anybody remaining exposed all this time during the struggle. It is only natural, I take it, that if a person was struggling and had his penis out at that time, there is always the tendency that it would slip back into the trousers. Nevertheless, he claims that he was not exposed, during this period, when he finished urinating, he buttoned up his trousers. He denies her statement that he had her back against a fence. He denies having his hand up her skirt trying to pull her drawers down. He denies offering her money as she has stated he did, or of telling her that he would be careful. He claims that all that happened in that moment was nothing more than putting his arm around the girl and asking her to go to the dance with him. She claims that he had his hand up her skirt and tried to pull her drawers down; that he had offered her money; and that he ~~XXXX~~ had promised to be careful. He denies all this. He states he made no improper advances to the girl, that what he did was merely have his arm around her and asking her to go to the dance with him. She claims that the reason she screamed that final time was because he had his hand up her skirt. He denies this. His claim is that he was trying to make her come with him to the dance. Finally, she resorted to the feminine way of getting results by letting out a scream. She offered to make a date with him at a future time. His claim is that she was late in getting in. By her own admission she stated that she was supposed to be in by 11 o'clock and naturally ~~XXXX~~ she could not go to the dance with him and apparently could not make him understand that she had to be in. He seemed to be persistent in trying to make her come with him to the dance and this is what led to her final scream at which they parted. The accused denies making any improper advances to the girl. He claims that the only way in which he had his hands on her were through holding her by the hand or having his arm around her, which actions, in themselves, are quite ~~XXXXXXXXXX~~ innocent. He made a statement in the kitchen later on in the evening regarding meeting this girl and gave a few incidents of the trip of the trip from the station to the camp. He was asked, in the kitchen whether he made any improper advances to the girl and quoting Zarn "he said no" but that he would like to have tried to make her." and he knew Gunner Zarn quite well and had he improperly laid his hands on the girl, he would have told him about it. The girl permitted him to come with her, to hold her hand, and to put his arm around her; she made no objections to anyone. She apparently did not mind the fact that he was walking with his arm around her. I would suggest that she probably liked it.

Jed

SHEET XXXII

The accused has been in custody for 19 days and his conduct sheet shows that he only had two minor military offences, and I ask that the Court be lenient to the accused.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE.

B-6252 J. H. [unclear] Bdr.
#ICARV

J. H. [unclear]
Mey
Mey

W/60473 Pte. T. J. ...
H. J. ...

Answer: "I was distressed and excited."
Question: "Why did you not tell him that name when he asked you if you knew who the man was?"
Answer: "Wellson."
Question: "Do you remember what name you told the Corporal?"
Answer: "Yes."
Question: "There she said I was exposed, is that after I whispered?"

talked rather thickly but talked sense.
I met. The accused said of drink and
again, then he ran away. I made a complaint to the
and he offered to pull my drawers down. I screamed
I was trying to talk to him this time but it had no effect
all this time. Then he got me up against a fence again
with him and we were getting nearer to the Mine Station
take me again, all this time he was exposed. I struggled
untended, holding on to my wrist and then he tried to
this time. Near the Mine Station we stopped, then he
towards the Mine Station. He was holding on to me all
He came up on to the main road and turned to the right.
to him and he calmed down and we went on our way again.
my wrist but I managed to struggle free. Then I talked
up against a fence so I screamed. He put his hand over
the hands with my feet. Then he went for me and got me
holding on to my hand which annoyed me so I hit him on
quarters and then I knew where I was. He was still
the way and they showed us. We came out near the Mine
which annoyed me. We got to two soldiers and asked them
us the right way and we went on. He held on to my hand
another man whom we had met in the carriage. He showed
me in the wrong direction. We turned back and we met
on at Longmoor. He said he would see me home. He took
"I got into the train at Liss and the accused got
whom I recognized

as follows:-
W/60473 Pte. T. J. ...
Liss Cottage, Bordon, having been duly sworn states
W/60473 Pte. T. J. ...
Driver at A.I.S. Reception Camp,
taken on oath.
By direction of the Commanding Officer, the summary to
Reinforcement Unit, Canadian Army Overseas.
KITE, J., on the strength of No. 1 Canadian Artillery
SUMMARY OF EVIDENCE in the case of K. JAMES GUNNER

Witness
Witness

Second
Witness

W/45519 L/Cpl. Angus, E.M., 20th Hants. M.T. Coy.,
A.T.S. Reception Camp, Silverton Cottage, Bordon,
having been duly sworn states as follows:-

"Pte. Lyon arrived at about eleven-thirty and she appeared somewhat upset. I first thought that it was because she was late. As she was so upset I took her into the office and she burst out crying. So I made her sit in a chair and tell me all about it."

The accused declined to cross examine this witness.

E. M. Angus
.....
W/45519 L/Cpl. Angus, E.M., A.T.S.

Third
Witness

L.18392 L/Sdr. LeBoeuf, L.P., Reg't Police, No.1 C.A.R.U.
having been duly sworn states as follows:-

"Last Tuesday night, 3 Sep 42, after the dance was over I went up to the St. Lucia Mess and I met Gnr. Kyte and Gnr. Zaron and Gnr. Kyte started to tell him about a nice girl he met on the train. I recognise Gnr. Kyte as the accused."

The accused declined to cross examine this witness.

L. P. LeBoeuf
.....
L.18392 L/Sdr. LeBoeuf, L.P.

Fourth
Witness

H.16836 Cpl. McCaffrey, C.J., 9 Cdn. Prov. Coy. having
been duly sworn states as follows:-

"I was notified by my C.O. to go down and investigate a certain case. Upon arriving at the A.T.S. at Silverton Lodge, Bordon, I interviewed Pte. Lyon whom I recognise. She informed me of certain incidents and consequently I got in touch with Gnr. Kyte whom I recognise and asked him certain questions in regards to his movements the night previous and as a result I placed him under arrest. I produce as Exhibit "A" a statement signed by the accused after he was duly cautioned. I produce as Exhibit "B" a statement made by W/46047 Pte. Lyon, H. The accused declined to cross examine this witness.

H. J. McCaffrey
.....
H.16836 Cpl. McCaffrey, C.J.

Fifth
Witness

L.27628 L/Cpl. Graham, G.N.R., 9 Cdn. Prov. Coy. having
been duly sworn states as follows:-

"While on duty on the night of September the 8th, at about 2330 hours a girl from the A.T.S. came running along the street opposite the guard gate, Quebec Barracks, No.1 C.A.R.U. She was sobbing and weeping so I asked her what was the matter. She said she had just been attacked by a soldier. So I asked if she knew who

Fifth
Witness
(cont.)

the man was and she said he was a Canadian soldier from the R.C.A. and that she was an American. So I asked her where this happened and she said that it happened down by the Fire Hall. I asked her how long ago this was and she said not long ago. So I took her particulars her name was Hazel Lyon, driver in the A.T.S. Reception Camp, Silverton Cottage, Bordon, and she said that the man's name was J. Neilson and that he was from the R.C.A. I reported it to my Company Orderly Room. Considering that it was dark I identify Pte. H. Lyons as the person who made the complaint to me as above mentioned."

The accused declined to cross examine this witness.

F. Graham
.....
L.27622 L/Cpl. Graham, G.N.R.

The accused, having been duly cautioned in accordance with R.P. 4 (e) declined to make a statement.

Certified that R.P. 4 (c), (d), (e) and (f) and (g) have been complied with.

Taken down at Bordon, Hants.,
in the presence and hearing
of the accused, this 15th
day of September, 1942.

N.H. Silverman
(N.H. Silverman) Lieut., R.C.A.

Old sheet destroyed on completion of 6 months service 27-5-41.

Date of enlistment } 27-11-40 G.C. / Badges /
 Sheet No. 1 Signature O.C. / Company, etc. /

Service or Proficiency Pay

M.F.M. 6
 (A.F.H. 122)
 FORM 7-11 (11-29-39)
 H.Q. 1173-22-1552

No. 72858 Name KYTE, S.J.
 Date of last entry in Company Conduct Sheet
 No. and date of last drunk

Regt., Battery, or Company
 Corps R.C.A.
 Period not reckoning towards freedom from extra fine

Character

Place	Date of offence	Rank	Charge of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order discounting with trial	By whom awarded	Remarks
FRANCE	2-6-41	Gnr.		Neglecting to obey Camp Orders (Out of Bounds) En. Order #115.	Lieut. L.H. Hobden	7 days C.B.	3-6-41	Major F. Barber	
Rupert	41			19-5-41 A.A. Sec. 11. Convicted by a Civil Court at Fr. Rupert. B.C. unlawfully supplying liquor to an Indian.		Fined \$50.00		Civil Court	
FRANCE	2-6-41	Gnr.		(1) Neglect to the prejudice failing to arise at reveille.	Cpl. Muscroft	7 days C.B.		Capt. E.A. Bayle	
NEW ZEAL.	27-11-41	Gnr.		(2) Failing to appear on parade. Absent from Roll Call. A.A. 15(2)					

Norman Suber

15 Sep 42 Certified True COPY.

COUNTER NUMBER 551861

HOUR 2215

OPERATOR'S INITIALS BJM

RELIEVING OPERATOR _____

Affidavit

PROVINCE OF ONTARIO
 COUNTY OF CARLETON

J. J. P. P.
 of the City of Ottawa, in the County of
 Carleton, an employee of the Department of
 National Defence, make oath and say:

TO WIT:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.
2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.
3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the
 City of Ottawa, in the
 County of Carleton, this
 day of
 A.D. 19

 CAMERA OPERATOR

 A NOTARY PUBLIC

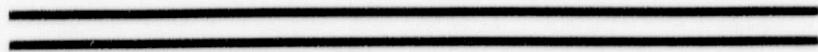
Dated _____
 30th 19 57

APPENDIX "A" TO THE AFFIDAVIT

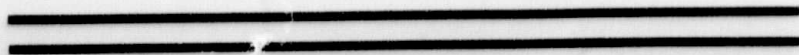
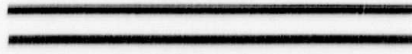
CAMERA OPERATOR'S REPORT

PRODUCTION DATA			JOB NO. <i>44</i>	REEL NO. <i>44</i>
			BOOK NO. <i>7-5</i>	
			INDEXING DATA	
			BEGINS WITH <i>EXPLIN V.3.</i>	
STARTED	DATE	HOUR	1.	
FINISHED			2.	
TOTAL NO. OF HOURS		<i>25 mins.</i>	3.	
TOTAL NO. OF IMAGES		<i>361</i>	ENDS WITH <i>EXPLIN V.3.</i>	

END



FIRST



SIDE

44.44