



## COURT MARTIAL

**Citation:** *R. v. Boyer*, 2016 CM 1017

**Date:** 20161003

**Docket:** 201603

Standing Court Martial

Canadian Forces Base Esquimalt  
Victoria, British Columbia, Canada

**Between:** ?

**Her Majesty the Queen**

- and -

**Able Seaman P. Boyer, Offender**

**Before:** Colonel M. Dutil, C.M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Able Seaman Boyer admitted his guilt to one count of drunkenness under section 97 of the *National Defence Act* and one count of having fought with a person subject to the Code of Service Discipline under section 86 of the Act. The charges read as follows:

<b>FIRST CHARGE</b> S. 97 <i>NDA</i>	<b>DRUNKENNESS</b> <i>Particulars:</i> In that he, at approximately 0140 hours, 8 October 2015, onboard HMCS CALGARY, alongside San Francisco California, was drunk.
<b>SECOND CHARGE</b> S. 86 <i>NDA</i>	<b>FOUGHT WITH A PERSON SUBJECT TO THE CODE OF SERVICE DISCIPLINE</b> <i>Particulars:</i> In that he, at approximately 0200 hours, 8 October 2015, onboard HMCS

CALGARY, alongside San Francisco, California,  
United States of America, fought with K13 478 100  
AB AMBROZIAK P.W.

[2] Counsel made a joint recommendation in asking the Court to impose a sentence composed of a reprimand and a fine in the amount of \$1,000, payable in four equal instalments. Unless the Court finds that the proposed sentence is contrary to public interest or that it would bring the administration of justice into disrepute, the Court must accept it. After review, the Court accepts the joint proposal as it is a fair and just sentence that contributes to maintain discipline in promoting the objectives of denunciation of the conduct, rehabilitation of the offender as well as general and specific deterrence.

[3] The facts surrounding the commission of the offence are found in the statement of circumstances filed in court at Exhibit 8. It indicates that:

On 8 October 2015, HMCS CALGARY was alongside in San Francisco, California. Able Seaman Boyer was in the Junior Ranks mess on the ship at approximately 0140 hours. Master Seaman Truscott saw him and judged him to be drunk. Master Seaman Truscott approached Able Seaman Boyer and told him he was not to consume any more alcohol. Master Seaman Truscott also told the bartender, Master Corporal Maguire, that he should not serve Able Seaman Boyer any more alcohol. Five minutes later, "last call" announced in the mess, and Master Seaman Truscott saw Able Seaman Boyer reaching for a beer on the bar. Master Seaman Truscott said to Able Seaman Boyer "You were told not to consume any more alcohol. Now you need to go to your rack." Able Seaman Boyer became argumentative and opened the can of beer. Master Seaman Truscott restrained Able Seaman Boyer by the wrist and told him to put the beer down and go to his rack. Able Seaman Boyer turned the can of beer over and poured it onto the bar counter. He was directed once more to go to his rack. Master Corporal Maguire asked the duty PMC to escort Able Seaman Boyer to his rack.

Master Seaman Wright had overheard Master Seaman Truscott's direction to Able Seaman Boyer, and advised Able Seaman Boyer to comply. Able Seaman Boyer continued to be argumentative. Master Seaman Wright began escorting Able Seaman Boyer to his mess deck. While being escorted, Able Seaman Boyer turned and went up the ladder outside the junior ranks mess. Master Seaman Wright told him he was going in the wrong direction. Able Seaman Boyer told Master Seaman Wright to "fuck off", but stopped going up the ladder as the Combat Officer was standing at the top. Master Seaman Wright then escorted Able Seaman Boyer to his rack.

When Master Seaman Wright had left, Able Seaman Boyer left his rack and went up to the smoking area. He was seen by Petty Officer 1st Class Ogden on the port side of the fo'c's'le of HMCS CALGARY at approximately 0200. Able Seaman Ambrosiak was also there, sitting on the deck fitting between the kingpost hatch and the hatch leading down to the 2 Mess flats. The hatch leading to 2 Mess flats opens upwards. It has thin steel combing around it that is exposed when the hatch is open. It has a large steel handle that faces upwards when the hatch is closed. A steel ladder leads down from the hatch to the deck below. Petty Officer 1st Class Ogden heard, and Lieutenant (N) Kim saw, some commotion. Leading Seaman Demoe heard some words exchanged between Able Seaman Ambrosiak, and Able Seaman Boyer, though he did not hear what was said. Able Seaman Boyer then lunged toward Able Seaman Ambrosiak, tackled him up off his seat, grabbing him by the throat and slammed him down onto the hatch leading to the 2 Mess flats, which was closed. Able Seaman Boyer landed on top of Able Seaman Ambrosiak. Petty Officer 1st Class Ogden saw Able Seaman Ambrosiak appearing to wrestle with Able Seaman Boyer to get him off of him. Petty Officer 1st Class Ogden and Lieutenant (N) Kim yelled at Able Seaman Boyer and Able Seaman Ambrosiak to stop what they were doing. Petty Officer 1st Class Ogden checked Able Seaman Ambrosiak and found him to be angry but apparently uninjured.

Petty Officer 1st Class Ogden ordered Able Seaman Ambrosiak to back away and to try to calm down, and ordered Able Seaman Boyer to go immediately to bed. Able Seaman Boyer continued to smoke his cigarette. Petty Officer 1st Class Ogden told Able Seaman Boyer not to take one more puff, and to go straight to bed. Able Seaman Boyer flicked his cigarette onto the deck at Petty Officer 1st Class Ogden's feet. Petty Officer 1st Class Ogden told him to pick up the cigarette and put it in the butt can. Petty Officer 1st Class Ogden noted that Able Seaman Boyer appeared to be extremely intoxicated. Petty Officer 1st Class Ogden again told Able Seaman Boyer to go to bed. Able Seaman Boyer left the fo'c's'le and entered the port breezeway. He was there told to go to bed by Lieutenant (N) Kim. He then started to return to the fo'c's'le. Petty Officer 1st Class Ogden told him again to go to bed. Able Seaman Boyer then left the fo'c's'le.

[4] During the sentencing hearing the following witnesses testified: Leading Seaman Ambrosiak; Able Seaman Boyer; Miss Emily Brooks, the offender's girlfriend; and Petty Officer 1st Class King, Able Seaman Boyer's unit advisor. Reference letters and Remedial Progress Reports were also filed with the Court. The evidence establishes that the offender and his victim were friends before and still engage in civil conversation today. Able Seaman Boyer has apologized to his friend for this unprovoked assault which, fortunately, does not appear to have left the victim with any permanent injuries. Although Able Seaman Boyer does not remember the incident, he

explains that he used to drink alcohol excessively, at that time, to the extent that he would experience blackouts when he drank to excess. After the incident, he was repatriated to his unit in Victoria and ordered to report to medical authorities for his serious drinking addiction. After attending group meetings and being sober, on and off, in the following months, he has now ceased to drink alcohol since mid-December 2015 and he enrolled voluntarily into a 70 days' rehabilitation program at the Edgewood Clinic that he completed with success. He has been sober for the last nine months and he is committed to maintain his new way of life and demonstrate his professional dedication in the Royal Canadian Navy. Petty Officer 1st Class King also told the Court that, to her knowledge, the promotion of Able Seaman Boyer has been delayed since August 2016, pending the results of this court martial. The Court notes that Able Seaman Boyer enjoys the full support of his girlfriend, friends, family and chain of command after having demonstrated his commitment to move forward with his life.

[5] As the fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline, it must be achieved by imposing punishments that meet one or more of the following objectives: to denounce the unlawful conduct; to deter the offender, but also others who might be tempted to commit such offences; to separate offenders from society, where necessary; to provide reparations for harm done to the victims or to the community; to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community; and, the reformation and rehabilitation of the offender.

[6] The sentence must also take into consideration the following principles. The sentence must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility. It should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Finally, the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. However, it remains that the Court must act with restraint in determining sentence in imposing such punishment that should be the minimum necessary intervention to maintain discipline.

[7] In addition to the objective seriousness of these offences, where persons found guilty are liable to imprisonment for less than two years, the Court considers that the circumstances surrounding the commission of the offences are very serious. Not only was he highly intoxicated, his behaviour towards his superiors in the Mess and onboard ship that night was totally unacceptable. In addition, the attack on his friend was unprovoked and gratuitous. It is fortunate that the hatch was closed and that no serious injury or death occurred as a result of that assault.

[8] However, the Court considers the following elements to be mitigating factors in the circumstances:

- a. The pleas of guilty of Able Seaman Boyer. The offender has admitted his guilt to the offences before the Court. The Court considers that it is an

expression of remorse for his actions and the acceptance of his responsibility. He has apologized to his victim prior to this court martial and stated that he still feels terrible about this incident and he is very sorry for what he did. The Court found him sincere and genuinely remorseful;

- b. The absence of a criminal or disciplinary record. The offender has no prior criminal conviction and it is his first encounter with the military justice system; and
- c. The conduct of the offender since the commission of the offences: Able Seaman Boyer has taken every step to rehabilitate himself in all aspects of his life. He has been sober for more than nine months and he is truly engaged in his battle against his addiction to alcohol with the support of his girlfriend, friends and chain of command. Professionally, he has performed very well since the incidents and he continues to prove to his chain of command that he can be a proud asset in the Canadian Armed Forces as a reliable storesman and professional sailor.

**FOR THESE REASONS, THE COURT:**

[9] **FINDS** you guilty of one count of drunkenness under section 97 of the *National Defence Act* and one count of having fought with a person subject to the Code of Service Discipline under section 86 of the Act.

[10] **SENTENCES** you to the following punishments: a reprimand and a fine in the amount of \$1,000, payable in four equal monthly instalments, beginning 15 October 2016.

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**Counsel:**

Major E.J. Cottrill for the Director of Military Prosecutions

Major C.E. Thomas, Defence Counsel Services, Counsel for Able Seaman P. Boyer