



## COURT MARTIAL

**Citation:** *R. v. Shulaev*, 2018 CM 2003

**Date:** 20180122

**Docket:** 201758

Standing Court Martial

Canadian Forces Base Shilo  
Shilo, Manitoba, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Sergeant A. Shulaev, Offender**

**Before:** Commander S.M. Sukstorf, M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Today, Sergeant Shulaev admitted his guilt to one charge contrary to section 97 of the *National Defence Act (NDA)* which reads as follows:

*Particulars:* In that he, on or about, 28 July 2017, at or near the International Peacekeeping and Security Centre in Yavoriv, Ukraine, was drunk.

[2] The evidence before this Court includes a Statement of Circumstances, which reads as follows:

#### “STATEMENT OF CIRCUMSTANCES

1. At all material times, Sergeant Shulaev was a member of the Canadian Armed Forces, Regular Force. He was serving as an infantryman in the 2nd Battalion Princess Patricia’s Canadian Light

Infantry, and was deployed in that capacity as a member of Joint Task Force Ukraine, Operation Unifier (JTF-U (Op UNIFIER)), Yavoriv Training Area, L'viv Oblast, Ukraine.

2. While in theater, Sergeant Shulaev was employed as an infantryman whose role was to train Ukrainian soldiers in infantry and soldiering related skills.

3. During the deployment, Theater Standing Order 107 – Policy on Alcohol and other Substances, issued 5 April 2017 – outlined to the members of JTF-U the rules regarding the possession and consumption of alcohol. Sgt Shulaev was aware of TSO 107 and the maximum of two alcoholic drinks per 24 hour period. The policy also provides that members of JTF-U are at all times ambassadors of Canada and will maintain a high standard of professionalism both on and off duty.

4. On 28 July 2017 at approximately 0100 hours, Master Seaman Botelho, who was residing in Hostel 7, CAF quarters at the International Peacekeeping and Security Centre in Yavoriv, Ukraine, woke up to the sound of someone screaming profanities (in English) and causing a ruckus outside of Hostel 7. As the member was concerned, she got dressed and attended the area behind Hostel 7. MS Bothelho was met by Sgt Burton and observed two other members, subsequently identified as Sgt Lewis and Sgt Shulaev. The member noticed a large bruise on the side of Sgt Burton's face and noted that the other two members were embracing each other and were violently striking each other while one of the two was crying inconsolably. She expressed her concern to Sgt Burton after he asked her to identify herself and was told by Sgt Burton that everything was fine and that she should go to bed. Sgt Burton then thanked MS Botelho for being caring. As she was concerned for the wellbeing of Sgt Burton and the other two members, MS Botelho woke MCpl O'Brien, Military Police, who was residing in Hostel 7.

5. MCpl O'Brien attended the area behind Hostel 7 to investigate the member's report of loud noises. At this time, MCpl O'Brien was not in uniform and was not visibly identifiable as a member of the military police. MCpl O'Brien attended the Hostel 7 exit leading to the area of the reported ruckus and was met by Sgt Shulaev. Sgt Shulaev used his right forearm to push MCpl O'Brien back into the exit for Hostel 7 and told MCpl O'Brien to "go away". MCpl O'Brien noted a strong odour of alcohol emanating from Sgt Shulaev's breath. MCpl O'Brien identified himself to but was again pushed in the chest by the right forearm of Sgt Shulaev, was told to leave and that this was a matter for sergeants.

6. MCpl O'Brien observed Sgt Burton and Sgt Lewis talking, consoling each other and hugging. Investigation by MCpl O'Brien led

him to believe Sgt Shulaev and the other two sergeants were intoxicated by alcohol. MCpl O'Brien woke the TF Sherriff, WO Boyd, a military police member, by calling him on his telephone as he slept in his Hostel 7 room. At the same time, Sgt Shulaev and Sgt Burton assisted Sgt Lewis to his Hostel 7 room and then Sgt Shulaev and Sgt Burton exited Sgt Lewis' room and headed for a set of nearby stairs.

7. WO Boyd responded to the area and both he and MCpl O'Brien called for Sgt Burton and Sgt Shulaev to stop. Sgt Burton remained in the area of the Hostel 7 exit and Sgt Shulave departed the area. Sgt Burton was soon joined by Sgt Lewis returning to the area outside of the Hostel 7 exit.

8. As a result of forming the opinion that the three involved sergeants were likely impaired by alcohol, WO Boyd woke several members of the TF chain of command to assist with the incident.

9. Investigation conducted by MCpl O'Brien and Captain Kowalchuk confirmed the identity of Sgt Shulaev and that he was at his bedspace. Sgt Boyd attended the bedspace, woke Sgt Shulaev and directed him to accompany him to the area of the exit of Hostel 7 where the other two involved sergeants and assisting members of the Chain of Command were located. While interacting with Sgt Shulaev, WO Boyd formed the opinion Sgt Shulaev was intoxicated by alcohol.

10. Several high ranking non-commissioned and commissioned members of the COC responded and, through their observations, formed the opinion that Sgt Shulaev and the other two sergeants were obviously intoxicated by alcohol.

11. Due to both the level of intoxication and prior report of a ruckus, it was decided that a sentry, composed of rotating senior non-commissioned members and officers, would remain in the area of the collective sleeping areas of Sgt Shulaev and the other two sergeants throughout the remainder of the night. There were no other issues observed throughout the remainder of the night.

12. On 6 August 2017, three charges were laid against Sgt Shulaev in relation to his conduct on 28 July 2017. The Charges were referred to the Director of Military Prosecutions on 31 August 2017. Following a review of the investigation into this matter, on 3 October 2017 one charge was preferred by the Director of Military Prosecutions.

13. At the earliest opportunity following the 3 October 2017 preferral of the charge, Sgt Shulaev confirmed his intention to enter a plea of guilt and take full responsibility for his actions.”

[3] A Statement of Facts was also entered as evidence and reads as follows:

“STATEMENT OF FACTS

1. Prior to his work-up training for deployment on Joint Task Force Ukraine, Operation Unifier (JTF-U (Op UNIFIER)), Yavoriv Training Area, L’viv Oblast, Ukraine, Sgt Shulaev was experiencing difficulties. These were, in part, related to Sgt Shulaev being away from his wife for extended periods of time (in his capacity as a CAF member). Sgt Shulaev was on a back to back tour and had not returned to Canada in 8 months at the time of the incident.

2. Sgt Shulaev took great pride in being promoted to his current rank and appreciated the confidence his Chain of Command placed in him as a NCM leader. However, as a result of the circumstances surrounding the matter before the court, Sgt Shulaev sincerely regrets his actions and feels that he has let his Chain of Command and peers down. This is in part why he has promptly accepted full responsibility for his actions, to demonstrate he is capable of learning from his mistakes, seeking any assistance necessary to improve his shortcomings and again be a model soldier, leading by example and being a well-respected member of his Chain of Command.”

**Joint Submission**

[4] In a joint submission, both the prosecution and defence counsel recommend that the court impose a sentence of a reprimand and a fine in the amount of \$750.

[5] The joint submission before the Court is reviewed in the context of the most recent Supreme Court of Canada (SCC) guidance in *R. v. Anthony-Cook*, 2016 SCC 43, which says that a trial judge must impose the sentence proposed in a joint submission “unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.”

[6] In a plea bargain, the prosecution recommends a sentence that the accused is prepared to accept, avoiding the stress of a trial and providing an opportunity for offenders, such as Sergeant Shulaev, to begin making amends, which in this case involved Sergeant Shulaev regaining the trust of his superiors and the respect of his peers and soldiers.

[7] As you heard when I verified the guilty plea earlier, by entering into a plea bargain, the constitutional right to be presumed innocent is given up and this should never be done lightly. In fact, as service members with the Canadian Armed Forces (CAF), this is a right we have all taken the oath to serve and protect. Thus, in exchange

for making a plea, the accused, must be provided a high level of certainty that the Court will accept the joint submission.

### **Assessing the joint submission**

[8] The prosecutor who proposes the sentence will have been in contact with the Sergeant Shulaev's chain of command. The prosecution is aware of the needs of the military and the surrounding community and is responsible for representing those interests. Conversely, defence counsel acts exclusively in the interests of the accused. Here, they have ensured that Sergeant Shulaev's plea is voluntary and informed and unequivocally acknowledges his guilt.

### **Evidence**

[9] In this case, the prosecutor read the Statement of Circumstances and provided the documents required at the *Queen's Regulations and Orders for the Canadian Forces* article 112.51; and on consent, a Statement of Facts that outlined Sergeant Shulaev's personal circumstances was also entered in court.

[10] In addition, the Court benefitted from counsel's oral submissions supporting their joint position on sentence where they provided case law precedent and emphasized the facts and considerations relevant to Sergeant Shulaev.

### **The Offender**

[11] Sergeant Shulaev is 35 years old. He enrolled in the CAF in October 2004 and has had a stellar career rising to the rank of sergeant in less than ten years. He was on his fourth operational tour and his second back-to-back tour in Ukraine, at the time this incident unfolded, having been away from home for over eight months.

### **Objectives of sentencing to be emphasized in this case**

[12] The prosecution and defence counsel advised the court that they had reviewed the objectives of sentencing and recommend that in this case, the main objective of general deterrence is to be emphasized. I agree with this recommendation. General deterrence means that the sentence should not only deter Sergeant Shulaev from reoffending, but it should also deter other CAF members who might be tempted to engage in similar behaviour.

[13] In making the joint submission, counsel advised the Court of the factors they considered in their submission. The Court highlights the following factors for the record:

- (a) The charge before the Court involved behaviour that occurred out of the country, on a deployment, in violation of an order that specifically limited the consumption of alcohol;

- (b) The incident occurred while Sergeant Shulaev was serving abroad as a senior non-commissioned officer in a mentoring role. As a senior non-commissioned officer, Sergeant Shulaev was responsible for enforcing the rules;
- (c) However, Sergeant Shulaev's guilty plea and his remorse must be given its full weight. Although he suffered a lapse of judgement, the fact that he took full responsibility for his conduct is an example of his high calibre and character as a senior non-commissioned officer; and
- (d) The Court recognizes that Sergeant Shulaev has an unblemished record and, in general, has made significant personal sacrifices on behalf of the CAF. His multiple deployments and rapid rise in rank are examples of the confidence that the chain of command has placed in him. The courage and humility exhibited in accepting responsibility for his conduct are reflective of genuine remorse and his guilty plea emphasizes his commitment to lead by example. Without a doubt, his early guilty plea is consistent with the character that the chain of command has consistently observed in him.

[14] As your defence counsel very eloquently stated, you made a mistake during a stressful time in your life. He referred to you as an honourable and courageous "diplomat warrior" who made a mistake. Defence counsel stated that, with your plea, you displayed courage and honour accepting immediate responsibility. The Court notes that your public acceptance of responsibility is not easy, but it stands as an excellent example of the fallibility that lies in all of us. In short, it is the way we subsequently deal with lapses in our judgement that reveals our true character; and sometimes public mistakes deliver stronger lessons than private ones. Sergeant Shulaev, you have demonstrated positive leadership thus far; the Court anticipates that a bright career in the CAF lies ahead for you.

### **Conclusion**

[15] After considering counsel's submissions in their entirety and considering all the evidence before the Court, I must ask myself whether the proposed sentence would be viewed by the reasonable and informed CAF member, as a breakdown in the proper functioning of the military justice system. Would it cause its stakeholders to lose confidence in the military justice system?

[16] Considering all of the factors, the circumstances of the offence and of the offender, the indirect consequences of the sentence and the gravity of the offence, the court is satisfied that counsel have discharged their obligations in making their joint submission.

**FOR THESE REASONS, THE COURT:**

[17] **FINDS** Sergeant Shulaev guilty of the charge of drunkenness contrary to section 97 of the *National Defence Act*.

[18] **SENTENCES** him to a reprimand and a fine of \$750 payable in \$100 payments until it is paid in full. The payments should begin no later than the 1st of March, 2018 pay period. In the event you are released from the CAF for any reason before the fine is paid in full, any outstanding unpaid balance will be due the day prior to your release.

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**Counsel:**

Major R.J. Gauvin for the Director of Military Prosecutions

Mr D. Hodson and Ms D. Mansour, Defence Counsel Services, Counsel for Sergeant A. Shulaev