



## COURT MARTIAL

**Citation:** *R. v. Fletcher*, 2015 CM 1004

**Date:** 20141211

**Docket:** 201432

Standing Court Martial

Esquimalt Courtroom  
Victoria, British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Leading Seaman Fletcher, J.R., Accused**

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

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### **REASONS FOR FINDING**

(Orally)

#### ***Introduction***

[1] Leading Seaman Fletcher is charged with one count of assault causing bodily harm contrary to section 267(b) of the *Criminal Code* and punishable under section 130 of the *National Defence Act*.

#### ***The Evidence***

[2] The evidence consists of the following:

- (a) the testimonies, in order of appearance before the Court, of Corporal Christopher Frame, Corporal Brendan Michael McDevitt, Leading Seaman Joshua Fletcher, Chief Petty Officer 2nd Class Kai Hing Tin,

Petty Officer Second Class Brian Benjamin Willms and Leading Seaman Gallivan Joseph MacDonald;

- (b) Exhibit 4, an agreed statement of facts;
- (c) Exhibit 5, a binder of thirty photographs depicting mostly the injuries suffered by Corporal Frame during the altercation with Leading Seaman Fletcher as well as the interior of 17 Mess of HMCS REGINA;
- (d) Exhibits 6 and 7, two diagrams of 17 Mess where the events took place and made by Corporal Frame and Leading Seaman Fletcher respectively; and
- (e) the evidence is completed by the facts and matters for which the Court has taken judicial notice under section 15 of the *Military Rules of Evidence*.

### ***The Facts***

[3] The events that led to the charges before the Court took place on 25 March 2014 in 17 Mess onboard HMCS REGINA during Operation ARTEMIS where the ship was in international waters in the Indian Ocean. Leading Seaman Fletcher, a reservist, joined the ship as a replacement cook in early March 2014, although he believes that he arrived in mid/late January. Leading Seaman Fletcher had participated in two previous operations. It appears that Leading Seaman Fletcher experienced difficulties early on to integrate with the other cooks of the REGINA, who had been working together for several months.

[4] On his arrival onboard ship, Leading Seaman Fletcher was assigned to 17 Mess and shared his quarters with approximately twenty other sailors, including Corporal Frame, another cook, a member of the Regular Force posted to HMCS REGINA. Their bunks faced each other, and, upon arrival, Leading Seaman Fletcher was not provided with a locker to store his kit as there were none left. It appears that some of his messmates complained when he placed some of his personal belongings on top of their lockers. The evidence also indicates that his work performance was questioned by his colleagues and that they made negative comments about it.

[5] Leading Seaman Fletcher felt that he was ostracized by his colleagues and that a pack mentality existed within the cooks of the galley. He mentioned that he was the victim of vandalism when his headphones were damaged and that they made him feel unwelcome. According to Leading Seaman Fletcher, Corporal Frame would have also struck his kit bag once and showed animosity towards him. According to Leading Seaman Fletcher, the offensive behaviour against him would have culminated when his laptop computer was vandalized after someone, whom he believed to be Corporal Frame, ejaculated on his laptop computer screen. Corporal Frame denied these

allegations. Leading Seaman Fletcher spoke about the laptop incident with other sailors, telling some of them he believed Corporal Frame was responsible for the mischief.

[6] It seems that the rumours spread quickly. As a result, Corporal Frame approached Leading Seaman Fletcher to discuss the incident, but denied any involvement. Leading Seaman Fletcher did not believe him and wanted an apology. Shortly after this first encounter, Corporal Frame met again with Leading Seaman Fletcher to discuss the issue, this time in the presence of Private Basso. According to Corporal Frame, Private Basso was only there as a witness and did not take an active role during the discussion. Corporal Frame said that the discussion was civilized and that the tone was normal. Leading Seaman Fletcher differs materially on this point. Again, Corporal Frame denied any involvement in the laptop incident and Leading Seaman Fletcher wanted an apology. As the apology was not forthcoming, Leading Seaman Fletcher decided to leave the galley. At this moment, Petty Officer Kendall emerged from the back of the galley and ordered everyone to leave the galley except Leading Seaman Fletcher and Corporal Frame. The supervisor had a one-way conversation with his subordinates and Leading Seaman Fletcher was told to report the incident to Master Seaman Potts who would inquire. The manner in which Petty Officer Kendall intervened is not consistent with the calm and civilized atmosphere described by Corporal Frame.

[7] Approximately four days later, Corporal Frame finished his day shift at 1700 hours and returned to 17 Mess in order to change clothes before taking his duty on the .50 cal machine gun. He described that, as he walked in his mess, he noticed that Leading Seaman Fletcher appeared to be sleeping in his bunk. According to his version of the events, Corporal Frame was facing his bunk when he was hit from behind on the left side of his face by his aggressor who was also positioned on his left side. Corporal Frame stumbled on his right side and hit a locker. This is when he was hit a second time and fell down. He recognized his aggressor as being Leading Seaman Fletcher.

[8] According to Corporal Frame, as soon as he hit the floor, Leading Seaman Fletcher got on top of him, full mount, and said "Tell me you did it!" Corporal Frame denied this as Leading Seaman Fletcher was pounding him with his fists and trying to choke him. Corporal Frame yelled for help. He was covered with blood as he was trying to pull away from Leading Seaman Fletcher. Corporal Frame stated that he was in shock, holding his head up and trying to block the punches. The beating would have lasted a few minutes. Corporal Frame stated that he yelled again for help a second time, as loud as he could, as Leading Seaman Fletcher tried to choke him out. Corporal Frame said that he blacked out and awoke sometime later at sickbay.

[9] Corporal Frame denied attacking, fighting or hitting Leading Seaman Fletcher during the altercation. He testified that he had no personal issues with Leading Seaman Fletcher other than being falsely accused about the laptop incident. Corporal Frame stated that the rumours accusing him about Leading Seaman Fletcher's laptop computer came as a shock. He did not appreciate being the subject of these rumours and he wanted to resolve the issue verbally with Leading Seaman Fletcher.

[10] Leading Seaman Fletcher testified also during the trial. He described his experience on HMCS REGINA during Operation ARTEMIS as well as the altercation that took place with Corporal Frame on 25 March 2014 onboard HMCS REGINA. He testified that shortly after his arrival on the ship as a replacement cook, he did not feel welcomed by the other cooks. He agreed that his performance was sporadic at times and that he made mistakes; however, his teammates were making negative comments about his work and he felt ostracized.

[11] With regard to his relationship with Corporal Frame, Leading Seaman Fletcher said that he introduced himself the first day, but that they did not develop a relationship as they worked on different shifts. Leading Seaman Fletcher testified that Corporal Frame's attitude towards him deteriorated as well. Leading Seaman Fletcher stated that he tried to engage in conversation with Corporal Frame but was unsuccessful. Being himself an athlete with ten to fifteen years of experience in martial arts, including judo, wrestling and kick-boxing, he said that he saw an opportunity for a subject of discussion with Corporal Frame when he saw him and another sailor doing a kung fu demonstration in the galley on one occasion. Corporal Frame denies that this ever happened; however, Corporal Frame agreed having played around with friends doing kung fu as well as practising boxing during his high school years.

[12] Leading Seaman Fletcher further testified that as time went on, the atmosphere deteriorated to the point with his co-workers that he felt they were looking at every opportunity to make it miserable for him, including the incident of the earphones, Corporal Frame kicking his kit bag, up to the laptop incident. He felt that having semen all over his laptop computer screen was disgusting and rude. Leading Seaman Fletcher explained that as Corporal Frame was working on different shifts and slept in the bunk across from his, he believed that Corporal Frame was responsible for this act of vandalism. Leading Seaman Fletcher described that when he found his laptop in such condition, he felt sick, mad, depressed and shocked. Leading Seaman Fletcher testified that he developed a sense of paranoia, asking himself what they would do next against him or his property. He decided to raise the issue with Petty Officer Kendall who told him to report the problem to Master Seaman Potts, the Mess Mom, which he did. Leading Seaman Fletcher testified that he was hopeful that the situation would improve, but, unfortunately, it did not, according to him. Leading Seaman Fletcher stated that he further discussed the laptop incident with other colleagues, blaming Corporal Frame.

[13] He further stated that Corporal Frame approached him a first time about the laptop incident and denied any implication. As Leading Seaman Fletcher wanted an apology and did not believe Corporal Frame, he was not interested in continuing the discussion with him. It was approximately one hour later that Corporal Frame and Private Basso engaged with Leading Seaman Fletcher in the galley. Leading Seaman Fletcher stated that they were both angry and shouting at him. Corporal Frame was denying any involvement and Leading Seaman Fletcher decided to leave the galley as he was not to receive an apology from Corporal Frame. The accused stated that, as he was leaving the galley, Petty Officer Kendall called him back. This is where he talked

to Frame and Fletcher in a one-way conversation. Hoping that things would improve with his colleagues, he said that he just wanted to forget about the incident and move on; however, he was equally concerned that something else would happen to him because he felt that he was disliked by the other cooks. Leading Seaman Fletcher testified that, during the week preceding the assault, Corporal Frame addressed him with what Leading Seaman Fletcher described as dirty looks and that he made negative comments about his work.

[14] Leading Seaman Fletcher gave his version of events as to how the altercation occurred with Corporal Frame. On 25 March 2014, he had just woken up at 1500 hours because he had been switched from day shift to night shift. He heard some noise and noticed that Corporal Frame was changing clothes. He stated that the lighting in 17 Mess was low as the dimmed red light was on. Leading Seaman Fletcher laid in his bunk for a while as he waited for Corporal Frame to leave the room. As it did not happen, Leading Seaman Fletcher left 17 Mess to go to the bathroom across. When he returned, Fletcher was still wearing shorts and underwear.

[15] As he was getting his clothing together for his next shift, Corporal Frame told him that he wanted to talk to him about the laptop. Leading Seaman Fletcher felt that Corporal Frame was still angry about it, as Fletcher had continued to talk to other people about the incident. As far as he was concerned, Leading Seaman Fletcher had nothing to discuss with Corporal Frame, thinking that Frame disliked him.

[16] He described, using the diagram at Exhibit 7, where the two individuals were during the whole period. First, he described that when he returned from the bathroom, Leading Seaman Fletcher was right by his rack when Corporal Frame came back to his right from the corner. This is where Corporal Frame speaks to him about the laptop and he does not want to engage in that conversation as it is a dead issue. They are facing each other. Leading Seaman Fletcher stated that as he proceeded to leave, Corporal Frame grabbed him by the arm as they had their back toward the bulkhead. As he turned to walk away, Corporal Frame grabbed his right forearm in an aggressive manner that Fletcher felt, pulling Frame with him as he was saying "Fuck, Fletcher!" According to his testimony, Leading Seaman Fletcher pushed Corporal Frame with his forearm against the locker in frustration. The accused said that he was frustrated, upset and distraught. Leading Seaman Fletcher stated that Corporal Frame immediately struck back in waving his arms, striking him in the eye and punching him in the chest. Leading Seaman Fletcher testified that he lost his balance and felt blinded. At this time, he felt sick to his stomach, upset, distraught, nervous and angered. Leading Seaman Fletcher struck back at Corporal Frame with a semi-closed fist and Corporal Frame did the same and kept saying "Fucking Fletcher. Fuck you, Fletcher".

[17] According to his version of events, they were then engaged in a fight. Leading Seaman Fletcher threw three punches to Corporal Frame's face and they began grappling back and forth around the locker. Fletcher testified that, as he was trying to take Frame to the ground, Corporal Frame struck him again to the side of his head on

the ear with a knuckle punch. Leading Seaman Fletcher stated that this blow caused him severe pain and he felt that Frame would beat him up and that Frame would not stop.

[18] Leading Seaman Fletcher testified that he then hits Corporal Frame three more times to his face before grabbing him and both men ending up on the ground. They both grunt. On the ground, they wrestle and Fletcher puts Frame in a chokehold while on top by crossing his hands to subdue the other man, because he feels that Frame is not stopping and is enraged and he did not want to get punched anymore. Leading Seaman Fletcher stated that he could feel Frame's power to buck him off as he tried to hold him down. At that time, the accused is telling Corporal Frame "It's done, man". As Corporal Frame continues to be aggressive, he spins him around as Leading Seaman Fletcher indicated by pointing to Area H on the diagram at Exhibit 7. It is at this moment that Fletcher applies a second chokehold. As he is telling Frame that it is over, Fletcher releases the second chokehold so as not to cause injury.

[19] According to Fletcher, they both get up and leave the mess. They exchange words and Fletcher tells Frame to leave him alone now. Leading Seaman Fletcher stated that he walked away toward the exit and meets Corporal McDevitt. He said that Corporal Frame was behind him, unlike McDevitt who stated that Frame preceded Fletcher as Fletcher was grabbing Frame from behind. This discrepancy is not fatal to the reliability and the credibility of the testimony of Leading Seaman Fletcher. Leading Seaman Fletcher testified that he was in shock, disbelief and feeling the adrenalin. He maintains that he did not want to fight with Corporal Frame. Leading Seaman Fletcher stated that Corporal McDevitt accompanied him to the bathroom and that he later walked to the coxswain's office. He does not recall Corporal McDevitt wrapping his hands with a pillow case and he stated that his knuckles were not bleeding, but only swelling. According to him, the altercation did not last more than two minutes.

[20] Corporal McDevitt did not witness the altercation, but he heard a person yell for help while he was in the shower near 17 Mess. After he ascertained that the noise came from 17 Mess, he opened the door and saw Corporal Frame coming towards him, bloodied, followed by Leading Seaman Fletcher, who was saying, "I told you not to touch me", or words to that effect, as Fletcher was grabbing Frame from behind. Corporal McDevitt found that the two men were incoherent and in shock. Corporal Frame needed medical help, but kept saying that he had to go to the .50 cal. Leading Seaman Fletcher was grunting and was distraught, saying that Corporal Frame pushed him along the locker.

[21] Corporal McDevitt took Corporal Frame to sickbay and returned to the shower to change. He saw Leading Seaman Fletcher again in 17 Mess shortly after and the latter told him, "I told him not to touch me." Corporal McDevitt said that he wrapped Leading Seaman Fletcher's hands using a pillow case because they were dripping blood and very swollen, although he could not tell if it was Fletcher's blood. He stated also that when he entered the mess, Leading Seaman Fletcher had an extremely angry face and that his hands were gripped. Corporal Frame's right eye was swollen shut and that there was blood everywhere.

[22] The other witnesses testified to the general reputation of Leading Seaman Fletcher as being a good worker, as well as a calm, quiet and pleasant man. Leading Seaman MacDonald testified also that he knew both Corporal Frame and Leading Seaman Fletcher. With regard to his knowledge of Corporal Frame, he stated that Frame liked to converse with him a lot about mixed martial arts and that he spoke about how good he was. He remembers Corporal Frame telling him that he was the toughest guy at school and that he was good at fighting. Although Leading Seaman MacDonald said that Corporal Frame never mentioned he had any training in martial arts, he said that he liked to show off in front of him, because Leading Seaman MacDonald, himself, had a reputation, having been on the national boxing team.

[23] With regard to the photos contained at Exhibit 5, they provide a clear depiction of the injuries sustained by Corporal Frame, as well as the state of 17 Mess shortly after the altercation. Both Corporal Frame and Leading Seaman Fletcher made a diagram of 17 Mess and Leading Seaman Fletcher indicated where both men moved during the altercation, according to his version of events.

### ***Legal Analysis and Decision***

[24] Before this Court provides its legal analysis, it is appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt. Two rules flow from the presumption of innocence. One is that the prosecution bears the burden of proving guilt; the other is that guilt must be proved beyond a reasonable doubt. These rules are linked with the presumption of innocence to ensure that no innocent person is convicted.

[25] The burden of proof rests with the prosecution and never shifts. There is no burden on Leading Seaman Fletcher to prove that he is innocent. He does not have to prove anything. A reasonable doubt is not an imaginary or frivolous doubt. It is not based on sympathy for, or prejudice against, anyone involved in the proceedings. Rather, it is based on reason and common sense. It is a doubt that arises logically from the evidence or from an absence of evidence. It is virtually impossible to prove anything to an absolute certainty, and the prosecution is not required to do so. Such a standard would be impossibly high; however, the standard of proof beyond a reasonable doubt falls much closer to absolute certainty than to probable guilt. Reasonable doubt applies to the issue of credibility.

[26] In this case, Leading Seaman Fletcher testified during his trial. His version of events is not reconcilable with the testimony of Corporal Frame. I find the version of events of Corporal Frame problematic in many ways. There is no doubt that he suffered serious injuries and lost a significant amount of blood during the altercation with Leading Seaman Fletcher. He denied any aggressive behaviour towards Leading Seaman Fletcher, including the kicking of the kit bag of his alleged aggressor or having a heated discussion with Leading Seaman Fletcher in the galley in the presence of Private Basso as a witness, which prompted Petty Officer Kendall to intervene.

Corporal Frame maintained that this discussion was civilized and that the tone of voice was calm. His version of events is contradicted not only by Leading Seaman Fletcher, but by the very reaction of Petty Officer Kendall who intervened in a firm way.

[27] Corporal Frame testified that he was attacked from behind and struck twice before falling to the ground immediately and repeatedly pounded by Leading Seaman Fletcher's fists for several minutes. He contends that they never exchanged words before he was hit by Leading Seaman Fletcher. His version of events is not compatible with the photos of 17 Mess taken shortly after the events. The extent and the location of blood marks all over 17 Mess illustrates, in the Court's view, that the belligerents moved across the room. It is entirely consistent with the version of events given by Leading Seaman Fletcher.

[28] In addition, the injuries to his face, as described in the agreed statement of facts and the photographs, are consistent with clear blows to the face as opposed to a flurry of punches over a few minutes. The bruises to his face and arms are equally consistent with the description of events given by Leading Seaman Fletcher to the effect that they grappled around the lockers and on the floor. Considering that they were both in shock and incoherent when they were met by Corporal McDevitt in 17 Mess, the reliability of their testimony could raise some concerns; however, the Court accepts as credible and reliable the evidence of Leading Seaman Fletcher as being consistent with the photographs and the drawings filed in evidence, as well as what prompted Petty Officer Kendall's intervention in the galley four days prior to the altercation.

[29] The Court does not accept the evidence of Corporal Frame when he states that they did not exchange words immediately before the altercation and that he was attacked from behind without any involvement on his part throughout. The Court does not believe Corporal Frame when he affirms that he had no issue with Leading Seaman Fletcher.

The First Charge: An offence punishable under section 130 of the *National Defence Act*, that is to say assault causing bodily harm, contrary to section 267(b) of the *Criminal Code*

[30] Beyond the elements relating to the identity of the accused as well as the time and place of the alleged offence of assault causing bodily harm contrary to section 267(b) of the *Criminal Code*, the other essential elements that the prosecution shall prove beyond a reasonable doubt are the following:

- (a) that Leading Seaman Fletcher applied force to Corporal Frame;
- (b) that Leading Seaman Fletcher intentionally applied the force;
- (c) that Corporal Frame did not consent to the force that Leading Seaman Fletcher applied;



- (d) that Leading Seaman Fletcher knew that Corporal Frame did not consent to the force that Leading Seaman Fletcher applied; and
- (e) that Leading Seaman Fletcher caused bodily harm to Corporal Frame.

[31] I agree with counsel that the only issue in this case relates to whether Leading Seaman Fletcher acted in self-defence. Section 72.1. of the *National Defence Act* provides:

**72.1** All rules and principles that are followed from time to time in the civil courts and that would render any circumstance a justification or excuse for any act or omission or a defence to any charge are applicable in any proceedings under the Code of Service Discipline.

[32] The provision dealing with self-defence is found at section 34 of the *Criminal Code*. It reads, in part, as follows:

**34.** (1) A person is not guilty of an offence if

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- (c) the act committed is reasonable in the circumstances.

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) the person's role in the incident;
- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force; and

- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

[33] Applying the criteria set out in *R. v. W. (D.)*, [1991] 1 S.C.R. 742, the Court accepts the testimony of Leading Seaman Fletcher and is satisfied that there is an air of reality to the defence provided in section 34 of the *Criminal Code*. Section 34 of the Code sets out the elements of the defence that apply to any situation in which the accused acts to defend himself or another person. The criteria of reasonableness apply to both the perceptions and the response of the accused; therefore, there will be an acquittal if there is a reasonable doubt that the accused:

- (a) had reasonable and probable grounds to believe that force or the threat of force was used against him or another person; and
- (b) committed the action constituting the offence for the purpose of defending or protecting himself or another person from the use or threat of force; and
- (c) acted reasonably in the circumstances.

[34] These elements are cumulative. Therefore, the trier of fact will need to have reasonable doubt about each one of them in assessing those factors enunciated in section 34(2) of the Code.

[35] The first element of the defence of self-defence involving reasonable apprehension of force is objective. The question to be asked is whether a reasonable person, placed in the same situation as Leading Seaman Fletcher, would have concluded that force or the threat of force was being used against him. Characteristics of the accused will have to be considered, such as race and gender, for example, and the context, to some extent. This element is met in this case.

[36] The second element, committing the act for defence purposes, relates to Leading Seaman Fletcher's state of mind. He must have committed the act solely for the purpose of defending or protecting himself as opposed to seeking revenge, to discipline or control the other person. This part of the test is a purely subjective test. It will involve determining what drove the accused at the time of the act. Leading Seaman Fletcher feared for his safety when he received a blow to his ear. He stated that he felt, at that time, that Corporal Frame would beat him up in a no-holds-barred fight. This is where Leading Seaman Fletcher punched Corporal Frame three more times and wrestled him to the ground before applying two chokeholds on him to neutralize Corporal Frame.

[37] The prosecution submitted that if the accused's version is retained, this element of the defence could not survive because Corporal Fletcher was clearly seeking revenge and seeking to control the other person. This submission has some merit, but considering the evidence accepted by the Court, I find that Leading Seaman Fletcher subjectively feared for his safety and the Court is left with a reasonable doubt about it.

[38] The third element involves the extent of Leading Seaman Fletcher's response. This element is assessed objectively; namely, reasonable conduct, but, put into context through the very wording of subsection 34(2) of the Code, it must be recognized that proportionality is not the issue here. As stated in *Criminal Pleadings and Practice in Canada (Ewaschuk)*, at paragraph 21:5180:

In repelling an unlawful assault, an accused is *not* required to measure the force he uses in the necessitous circumstance to a nicety. For the frenzy of the occasion does *not* allow for detached reflection ...

[39] The prosecution submits that it has established, beyond a reasonable doubt, that Leading Seaman Fletcher's acts or response was not reasonable in the circumstances. The Court is satisfied that the nature of the force or threat, the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force, supports the actions of the accused. After the initial grabbing, he responded by pushing Corporal Frame to the locker. This action could have ended the matter, but Corporal Frame replied in hitting Leading Seaman Fletcher in the eye and in the chest. He responded in hitting Corporal Frame three times in the face and they both grappled back and forth in the locker area, then Corporal Frame punched Leading Seaman Fletcher on the ear, causing him severe pain. He then punched back three more times, before wrestling Corporal Frame to the ground before applying two chokeholds to neutralize him while he was telling Corporal Frame that "it's over". In the context, where both men were the only persons in 17 Mess and engaged in a fight with minimal lighting conditions and the door closed, the only other option would have been to run away. Accepting the evidence that the level of violence involved during the altercation quickly escalated, the actions of Leading Seaman Fletcher do not appear unreasonable in the circumstances.

[40] As to Leading Seaman Fletcher's role in the incident, he tried to disengage himself from the conversation with Corporal Frame when he was grabbed by the arm. His response was to push Corporal Frame in the locker to end the matter. Corporal Frame immediately responded and the matter quickly escalated. Again, Leading Seaman Fletcher acted in response. No weapon was used or threatened to be used. They were both solid men, approximately six feet tall, although Corporal Frame, who weighed around 200 pounds at the time of the altercation, did concede ten to fifteen pounds to Leading Seaman Fletcher.

[41] It is a fact that Leading Seaman Fletcher had extensive experience in martial arts; however, his perception that Corporal Frame could fight and be a threat to him was not unreasonable in light of the fact that he saw him earlier, in the galley, performing kung fu and talking about martial arts. They certainly did not like each other, but they never issued a challenge to fight.

[42] Their relationship on board ship was not harmonious and Leading Seaman Fletcher truly believed that the other cooks disliked him and his work, including Corporal Frame, despite his own assertion that he had nothing against him. The Court does not believe him on this issue. I accept that Leading Seaman Fletcher had a

reasonable perception that his colleagues were there to get him and make his life unpleasant. It may have been exaggerated, but his perception was not unreasonable. Whether the nature and the proportionality of the response by Leading Seaman Fletcher against Corporal Frame was reasonable is not determined using a frame-by-frame analysis. The climate between the two individuals, the lighting conditions, the layout in 17 Mess and the gradation of the violence in response to the actions of Corporal Frame are important.

[43] I agree with the defence that when Leading Seaman Fletcher was hit on the ear, the level of threat for his safety dramatically increased as he was now really engaged in a fight. The photographs demonstrate that it was intense and that there was significant movement in 17 Mess. Leading Seaman Fletcher does not have to establish that he acted reasonably in the circumstances; it is for the prosecution to prove beyond a reasonable doubt that the accused did not act reasonably for the purposes of section 34 of the Code. Based on the evidence that the Court accepts, the Court is left with a reasonable doubt that Leading Seaman Fletcher did not act in self-defence.

**FOR ALL THESE REASONS, THE COURT**

[44] **FINDS** Leading Seaman Fletcher not guilty of the first charge.

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**Counsel:**

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Counsel for Her Majesty the Queen

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