



## COURT MARTIAL

**Citation:** *R. v. Leading Seaman C.M. Ritchie*, 1997 CM 39

**Date:** 8 December 1997

**Docket:** F199739

Standing Court Martial  
Washington State, United States of America  
Maritime Pacific Headquarters Detachment Whidbey Island

**Her Majesty the Queen**

- and -

**Leading Seaman C.M. Ritchie, accused**

**Before:** Commander R.F. Barnes, M.J.

### Warning

**Subject to sub-section 486(3) and 486(4) of the *Criminal Code* and section 179 of the *National Defence Act*, the court has directed that the identity of the complainant and any information that would disclose the identity of the complainant shall not be published in any document or broadcast in any way.**

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### FINDING

(Orally)

[1] Thank you. Please be seated. Now, to the findings in this trial. The first issue is the credibility of the complainant, Petty Officer X.. Her evidence of the events in the

bedroom of her house was concise. Except to the extent of the inconsistencies between her evidence and what she reported to her boyfriend, Petty Officer A., she was not really challenged in cross-examination on the actual assault as she described it in her direct examination.

[2] The other challenges to her credibility concerned how much she said she had to drink at the party, her level of sobriety, and whether she said something at the party which indicated that she, and her now fiancé, Petty Officer A., had parted ways. These of course are collateral matters which do not apparently go to show emotional prejudice, bias or partiality. A literal reading of Military Rule of Evidence 99 would exclude evidence to contradict a witness on such collateral matters. As well, Military Rule of Evidence 100(4) would also tend to exclude evidence of a prior inconsistent statement where the circumstances of the prior statement were not sufficiently put to a witness such as Petty Officer X. during cross-examination.

[3] Rules of evidence, of course, like any other law, are subject to the right of an accused to a fair trial and to make full answer in defence under the Charter of Rights and Freedoms. As well, the credibility of the complainant could be considered in this trial as a central issue and in that sense it can be considered to be a material matter rather than a collateral one.

[4] The circumstances of the prior statement of Petty Officer X. at the party, concerning breaking up with Mr A., were more or less mentioned in her cross-examination. The evidence of the disputed statement, therefore, has some relevance and weight on the issue of Petty Officer X.'s credibility, unlike the prior statement of Petty Officer X. concerning her sobriety reported by Petty Officer D. of which there was no inkling in the cross-examination of A..

[5] The evidence from Mrs B. and Leading Seaman C. was to the effect that Petty Officer X. stated that she was a free woman and wasn't going to do that stuff anymore. She then replied, that is A., then replied affirmatively to a question from Leading Seaman C. if this referred to a break up in her relationship with Mr A., and at that point she gave the "Krameresque" response of "Oh yeah". I should point out at this point that the party atmosphere and the manner of the response which she gave could not be described as a solemn occasion.

[6] In cross-examination Petty Officer X. indicated that she can't recall saying anything at the party to suggest that she and Petty Officer A. had broken up and certainly not at the start of the party. Leading Seaman C. stated that she made this statement when she arrived at the party. It is clear that Petty Officer X. called Petty Officer A. on Sunday

evening, a matter of hours after the incident and about 24 hours after her alleged statement to the effect that she had broken up with him.

[7] The defence called Petty Officer A. as a witness to testify about this telephone conversation. There was no evidence to suggest that they were no longer a couple on the 15th of June. However, Petty Officer X.'s evidence was that, at that point in their relationship, there was uncertainty how things would pan out as A.'s future could take him elsewhere.

[8] If Petty Officer X. made the statement attributed to her at the party, then it was not apparently true. She is described by C. as an outgoing flirtatious and boisterous person. There are several possibilities which arise from this evidence. It is possible that she made the remark to create attention or for some other reason. It is possible that she did not make such remark. It is further possible that she made a different remark and there was a misunderstanding by C. and Mrs B. as to her intent, and it is possible that she does not recall the remark if she did make it and, of course, lastly, it is possible that she does recall it, but chose not to admit it so as not to jeopardise her current marriage plans with Mr A..

[9] What is clear is that the exact wording of the remark was not put to Petty Officer X. in cross-examination, so the weight of the evidence is somewhat reduced. In any event, only one of the possibilities is logically capable of affecting her credibility and, even assuming that the last possibility is accurate, I do not regard this inconsistent statement made at the party as significantly affecting her credibility as to the events which occurred in her bedroom involving Leading Seaman Ritchie.

[10] Regarding the sobriety of Petty Officer X., she initially did not admit to being drunk, rather only buzzed by alcohol. Later, she did admit to being drunk in replying to questions in cross-examination, including the comment that the evening of the 14th of June was a big drunk for her. Petty Officer X.'s evidence is that she had two beers in the afternoon while tanning and, while at the party, she drank a small amount of moose milk, two Kool Aid mixed drinks and at least two Jell-O shooters and another beer. She admitted that it was possible that she was drunker than she recalled, but that she was not drunk when she went to bed. She was also very tired.

[11] The comment to Petty Officer D. concerning her degree of drunkenness is not really inconsistent with her evidence and, as I indicated earlier, since Petty Officer X. was not examined as to her conversation with Petty Officer D., it is not evidently inconsistent with her testimony in court and it does not have any significant weight regarding her credibility. This evidence of alcohol consumption and tiredness and her evidence that she

is a hard sleeper is consistent with her testimony that she only woke up when Leading Seaman Ritchie was straddling her on the water bed.

[12] With respect to Petty Officers F., he recalled that Petty Officer X. drank three or four Jell-O shooters and three or four Kool Aid drinks at the party and he believes everyone had a beer at X.'s house, that is A.'s house, afterwards. His evidence at trial was that she was not unsteady or drunk and he did not adopt his earlier statements to the military police as accurate or true. The effect of the cross-examination of - rather, the Section 9(2) cross-examination of Petty Officers F. on his prior statements to the police and his explanation of mixing up two separate incidents did not impress me as credible. His evidence as to A.'s state of intoxication and alcohol consumption is just simply not credible in my view and I've disregarded it.

[13] With respect to F.'s evidence that Petty Officer X. told him she saw someone at the side of the bed, this is not inconsistent with her own evidence in court. She did not recall telling this to F. but she indicated that if he recalls it, it could only have come from her. This, I found, is not necessarily inconsistent with her testimony in court and it does not affect her credibility.

[14] With respect to the phone call to her boyfriend, Petty Officer A. on Sunday, I found Petty Officer A. - he was called by the defence - to be a straightforward and credible witness. To put his evidence in perspective, it must be remembered that the content of what Petty Officer X. told him on the phone is not admitted for its truth. Rather, it is apparently offered as a prior inconsistent statement by Petty Officer X. as to the incident and as a tool in assessing her credibility. It is therefore pertinent to examine what Petty Officer X. said in court about this phone call to A.. She testified in cross-examination that she was concerned and nervous about how A. would react. She stated that their future was somewhat uncertain due to his future career. She indicated further that she did not tell Petty Officer A. that she screamed for help. Rather, she told him she did not scream. She also indicated that she did not say that Petty Officers F. and Frerichs ran into the room and found Leading Seaman Ritchie at the foot of the bed, but she said she could have said anything to Petty Officer A. because she was nervous and hyper.

[15] During the telephone call to Petty Officer A., according to A., he kept on saying, "What, what". In re-examination, Petty Officer X. indicated that she was upset, nauseous, sick, nervous and crying regarding the telephone conversation with A.. She stated that there was a large possibility she could have said just about anything to him.

[16] The evidence of Petty Officer A. on the subject is that when he called A., he knew something was wrong, that she was reluctant to tell him the details, she was crying, and it took some time to calm her down. He was very vague on the details. Initially, he stated that Petty Officer X. told him that she awoke with someone touching her. She pushed Leading Seaman Ritchie away immediately. It was dark. He came back at her. She moved around the bed. At that point Petty Officers F. and Frerichs entered the room. Leading Seaman Ritchie was escorted out of the house by herself and she has said things like, "What the hell are you doing and what is going on here?" And she did not explain how Petty Officers F. and Frerichs got into the bedroom. As far as Petty Officer A. recalls, A. said she made enough noise to alarm F. and Frerichs, but he is not quite clear on how they got into the bedroom. After reviewing the police statements which he made on the 14th of July, his memory was refreshed as to what A. had told him on the telephone on the 15th of June. He then indicated that she said that F. and Frerichs came in, Petty Officer X. was screaming at Leading Seaman Ritchie and she told F. and Frerichs to remove him from the house.

[17] In cross-examination, Petty Officer A. indicated that he could tell something was terribly wrong with X. on the 15th of June. He had never had a call like that before. She was extremely emotional, crying and upset. He stated that he was not concentrating on the facts and he was pretty emotional, pretty blown away by the events himself. Because of this, he stated he may have been mistaken or he may have misinterpreted what she had said on the phone. He thinks she said she spoke loudly at Leading Seaman Ritchie, but he is not sure. He is sure, however, that Petty Officer X. said that Leading Seaman Ritchie entered the room without invitation and he touched her inappropriately without consent. She told him no and to get out of here. It's possible, according to A., that Petty Officer X. said she kicked him out.

[18] Looking at the whole picture and the emotional state of both parties to this telephone conversation, the general outline of what Petty Officer X. reported on the telephone is fairly consistent with her testimony. However, some details are different. She apparently gave Petty Officer A. the impression that she either screamed or made enough noise to cause Petty Officers F. and Frerichs to enter the bedroom, and this is inconsistent with her evidence in court on this point. Her testimony and that of Petty Officer A. is that she and he were emotional during the conversation and she was concerned how he would react. It may be that she embellished the story on the telephone, but she did not repeat this aspect of screaming in court. She does not deny that she could have told A. just about anything on the telephone.

[19] There is also the matter of the vision of somebody in the room, either in the doorway or on the side of the bed, which preceded the incident. This may or may not have

been Leading Seaman Ritchie and it may or may not have been a fictional dream by Petty Officer X.. It did not form part of the incident which she described on the bed with Leading Seaman Ritchie. If one speculates that it was indeed Leading Seaman Ritchie that she saw and he was on the side of the bed and not standing, it is clear that she went back to sleep, if indeed she really awakened. There was no apparent conduct or words which would amount to consent to Leading Seaman Ritchie's subsequent conduct. In my view, the fact that she readily admitted the vision supports her credibility.

[20] Leading Seaman H. testified that Petty Officer X. was upset on the Monday following the incident. F. also testified as to her upset condition on Sunday and I accept this part of his testimony since it is corroborated by A. and H. and indeed Petty Officer X. herself.

[21] After considering all the evidence as to the credibility of Petty Officer X., including her emotional state on Sunday and on Monday, and her demeanour in court, I find that she was a credible witness with respect to the events at her house and in her bedroom involving Leading Seaman Ritchie. I accept her testimony as to the events that occurred after she awoke to find Leading Seaman Ritchie straddling her on the water bed.

[22] I found the evidence of Leading Seaman H. as to the telephone conversation with Leading Seaman Ritchie in which Ritchie apparently admitted the events was not particularly helpful. Firstly, the details were not written down by H. and the differences in the details offered in direct and cross-examination do not inspire confidence that Leading Seaman H. is able to provide anything more than the bare gist of the conversation. Also, the conversation does not really address the order of events nor the issue of consent because it is not clear that anything but an attempted kiss occurred after Petty Officer X. said no. At best, this evidence confirms that Leading Seaman Ritchie at some point had his hands on her breasts and on her abdomen. She said no and told him to leave and he did. I did not put any weight on this evidence of the phone call between H. and Ritchie.

[23] The next issue is the truthfulness of the statements by Leading Seaman Ritchie to the military police. In my view, the first part of the interview referred to as side A by counsel, was basically exculpatory. In this, Leading Seaman Ritchie set out his version of the sequence of events and he really did not deviate from this sequence in his other iterations of the incident, except for adding the possibility of touching her breasts at the very end of the encounter. Leading Seaman Ritchie does not change the sequence of events, notwithstanding that during side B, Corporal Gillis provided him twice, with the basic sequence of events according to the complainant, which set out, of course, a different order. This is not consistent with Leading Seaman Ritchie's evidence that during the written statement he was endeavouring to provide the police with their version of

events. Furthermore, when he was asked by Master Corporal Todd to write a statement, Leading Seaman Ritchie stated that he wanted to be honest and he did not want to miss something that would display dishonesty.

[24] From the video tapes, I find that Leading Seaman Ritchie had a great deal of difficulty admitting what he had done. His demeanour, when describing the exculpatory version, was matter of fact and not emotional. He only became emotional during the interview when the police questioning hit on his sense of morality, truth, virtue and with respect to the train analogy. This is not consistent with his testimony that he was knowingly making a false confession for his own motives concerning his career. It is more consistent with someone who is having great difficulty facing what he had done and admitting his guilt. This view is supported by his statement to the police to the effect that he felt better after owning up to it and again after writing his written statement.

[25] In his testimony in court, Leading Seaman Ritchie was matter of fact, smiling on occasion when he described the encounter during direct examination, but only became emotional and cried on the stand when he was testifying as to that part of the interview where the train analogy was mentioned and there were the appeals to his values. His emotional reaction in court at this point is not in my view consistent with his testimony that again he was making a conscious decision to falsely confess in order to save his career or minimize the punishment. Furthermore, it is simply irrational to think that by confessing to a crime which one did not commit, one would save one's career in the Canadian Forces or the RCMP or that one could minimize the punishment. There was no evidence that Leading Seaman Ritchie was or is an irrational person.

[26] I find that several of Leading Seaman Ritchie's verbal statements are confessions of the events that occurred that night. They are as follows:

[27] One, after Corporal Gillis re-entered the interview room and delivered the story about his sick wife in the hospital. He then put the complainant's version of events to Leading Seaman Ritchie. Gillis said, "You went into that room. She was asleep on the bed." Leading Seaman Ritchie agreed. Gillis then said, "You didn't wake her up. You climbed on top of her. You straddled her and you put your hand up her top. She woke up, pushed you off her, right?" To this Leading Seaman Ritchie replied, "Yes" at the same time that Todd had asked him, "That's what happened?" And as an aside at this point, the transcript at Exhibit A indicates a response by Todd as unintelligible. But, from the video tape, it was clear that Leading Seaman Ritchie replied yes to this version by Corporal Gillis.

[28] Gillis then continued stating, "Then you went to the side of the bed. You took her hand. You tried to put it down your pants and you had an erection. She pulled her hand back and she told you to get out of her house and she took you to the door, did she not?" To this Leading Seaman Ritchie would only reply three times when pressed by Gillis, "Yes, she did." At best, this can only be regarded as an admission that she pulled her hand back from his pants, told him to get out of the house and took him to the door.

[29] Following this, the video tape reveals, at the point of the transcript just below mid-page 23, that Corporal Gillis stated, "You put your hands on her breasts. She woke up, saw it was you and pushed you off her and then you took your hand, grabbed hers and put her hand down your pants and both times she told you no, correct?" Leading Seaman Ritchie answered, "Yes."

[30] Secondly, after Corporal Gillis left the interview room for the second time, Leading Seaman Ritchie admitted to Master Corporal Todd that, "What she told you, you know, in all respect to her, is what happened. She is the one who was hurt by it. She vividly remembers it and that's how it happened." This is significant because Leading Seaman Ritchie had just heard Corporal Gillis repeat twice the version of events in the bedroom which could only have come from Petty Officer X., the only other witness to that encounter. The police had informed Leading Seaman Ritchie at the the beginning of the interview that they had already interviewed all the other people.

[31] Thirdly, the video also reveals at mid-page 26 of the transcript that Master Corporal Todd stated, "And you slid your hands up her top, under her and pushed her bra up" to which Leading Seaman Ritchie replied, "Yes."

[32] Fourthly, at the point of the video corresponding to about two thirds down page 28 of the transcript, Master Corporal Todd asked Leading Seaman Ritchie if he remembered putting his hands up her shirt to which Leading Seaman Ritchie replied, "Yes, I do. Yes, I do. It's coming back to me now with all the more force. I didn't have those thoughts before."

[33] I find that the written statement at Exhibit 13 is in fact a confession of guilt as to the occurrence of the incidents mentioned therein. A review of the video reveals that Leading Seaman Ritchie was apparently very careful and thoughtful when composing this statement after his emotional condition during the verbal confession which he provided. At the point in the video which corresponds to the top of page 35, Leading Seaman Ritchie stated to Master Corporal Todd, "I'm just getting to the part where I'm entering the bedroom and I'm just trying to ... like I want to tell it how it happened, how you guys explained it. I just want to kind of put it all in order, like how it went." Master



Corporal Todd again goes to some trouble at this point to explain that it is Leading Seaman Ritchie's statement and not Todd's statement or the police's statement that was required.

[34] It is noteworthy that the written statement at Exhibit 13 does not adopt the order or sequence of events which Corporal Gillis had provided to Leading Seaman Ritchie twice during the verbal portion of the interview and to which Leading Seaman Ritchie had earlier agreed. Rather, Leading Seaman Ritchie basically, in the written statement, sticks to the order of events which he originally stated. The police version clearly has Leading Seaman Ritchie straddling Petty Officer X. with his hands under her top and on her breasts before he placed her hand in his pants. Leading Seaman Ritchie's basic narrative version has the order as follows: He rubbed or fondled her abdomen, then he put her hand in his pants, then the straddle on the bed and then the hands on the breasts. It is apparent that he did not simply try to repeat the police version of events, but used his own recollection or his own earlier version of events.

[35] The testimony of Leading Seaman Ritchie in court did not strike me as credible. His evidence that he gave a false confession to a serious crime to avoid or limit his punishment, as I indicated earlier, is simply not plausible. In my view, it was a continuation of the effort to minimize his conduct and to clothe the incident in consent. As I said before, he became emotional when giving evidence concerning that part of his interview where Master Corporal Todd used the train metaphor and appealed to his values. If this confession was part of a plan or a motive to give a false confession to secure a better result for himself, as he stated, then there is no reason for him to become emotional when describing it. If, on the other hand, it is the point in the interview when Master Corporal Todd struck a deep chord inside him, it is more likely that he would be emotional, not only during the interview when it occurred, but also during his evidence in court when he was describing that part of the interview.

[36] I simply did not believe the testimony of Leading Seaman Ritchie as to the falsity of the confession or his version of the incidents in the bedroom which he described in his testimony as essentially a consensual encounter. I accept the confessions as true in respect of the events of the incident in the bedroom, but not necessarily as to the order or sequence of events.

[37] In summary, I find that the elements of the first charge have been proven beyond a reasonable doubt. The date, place and identity of the accused, Leading Seaman Ritchie, are not in any real dispute. I find that Leading Seaman Ritchie went into the bedroom of Petty Officer X. without invitation. He knew she was asleep. He straddled her on the bed and fondled her breasts on the skin. She woke up and pushed him off to the left

accompanied by words to the effect, "What the hell are you doing?" He tried to kiss her and she rejected this. He put her hand in his loosened shorts and made contact with his erect penis. She succeeded in pushing him off to the side of the bed. Leading Seaman Ritchie said he was sorry and found his sandals. She directed him to the door where he tried to kiss her, but was again rebuffed.

[38] I prefer the sequence of events as recalled by the complainant to that of Leading Seaman Ritchie in his written statement, but in either version the major elements of the assault are clear. There was no consent to any of this and from the verbal and written confessions, there was no belief, reasonable or otherwise, in consent on the part of Leading Seaman Ritchie. This was not a case of implicit consent nor a case of a gradually escalating process of intimacy. It is clear that he had the general intent to carry out these actions and they were clearly of a sexual nature.

[39] Although I have not accepted the evidence of Leading Seaman Ritchie as credible, I have nevertheless assessed the evidence that I have accepted in the light of his testimony, but his evidence does not raise any reasonable doubt in my mind with respect to this first charge.

[40] Now, with respect to the second charge, that of drunkenness, Leading Seaman Ritchie, in his testimony effectively admitted in court that he was under the influence of nine beers that evening and that this rendered him unfit to drive and unfit to be entrusted with any duty that he may be required to perform. This meets the definition of paragraph (2)(a) of Section 97 of the *National Defence Act*. The other elements of this offence have been made out, that is, the place, date and the identity. The alcohol consumption was clearly voluntary and I am therefore satisfied that the second offence has been established beyond a reasonable doubt.

[41] Would you stand up, Leading Seaman Ritchie. The court finds you guilty of the first charge and the second charge. You may be seated.

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