

In the Matter of Merchant Mariner's Document No. Z-907225 and all
other Seaman Documents
Issued to: FRANK WILLIAMS, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1041

FRANK WILLIAMS, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 21 October 1957, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman document upon finding him guilty of misconduct. Three specifications allege that while serving as Oiler on board the USNS TAMALPAIS under authority of the document above described, on or about 12 September 1957 Appellant did: 1. Assault the vessel's night engineer, Sylvester P. Carew; 2. Assault and batter, by striking with his hands, the vessel's night engineer, Sylvester P. Carew; 3. Assault and batter, by kicking with his feet, the vessel's night engineer, Sylvester P. Carew.

Setting forth three specifications resulting from one continuous transaction constituting a single offense, is duplicative pleading. In his decision, the Hearing Examiner combined the three specifications into one, thereby negating any possible prejudice to the Appellant.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and each specification.

The Investigating Officer made his opening statement and introduced in evidence the deposition of Kelton S. Farmer, Junior Engineer on the USNS TAMALPAIS and the testimony of the person assaulted, Sylvester P. Carew.

In defense, Appellant testified in his behalf. A statement of Alvin Rouse, crew member, was admitted by stipulation.

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At the conclusion of the hearing both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specifications had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served on 21 October 1957. Appeal was timely filed on 25 October and a supporting brief was submitted on 8 January 1958.

FINDINGS OF FACT

On 12 September 1957, Appellant was serving as an oiler on board the USNS TAMALPAIS and acting under authority of his Merchant Mariner's Document No. Z-907225 while the ship was in the port of Goodhope, Louisiana.

At approximately 0330, the 12-4 oiler went topside to call the 4-8 watch. He reported to the night relief engineer, Sylvester P. Carew, that the Appellant refused to get up. Carew went topside and found Appellant getting dressed. When asked if he were coming below, Appellant replied in a belligerent tone that he would be down later. Carew advised the Chief Engineer that Appellant was causing trouble. After talking to the Chief, Carew returned to the Appellant's room and found that he had left. As Carew turned to leave, he found Williams in the passageway blocking the door. When

Carew attempted to leave, Appellant cursed him and then attack him with his fists, knocking Carew to the deck. Carew shouted for help and attempted to defend himself with his flashlight as Appellant continued to batter him severely with his fists and feet. Several members of the crew, awakened by Carew's shouts, came to the scene and pulled Appellant off Carew. Appellant is 26 years old and weighs 165-170 pounds while Carew is 59 years old and weighs about 159 pounds.

Appellant has no prior disciplinary record with the Coast Guard.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Hearing Examiner erred in:

1. Not advising Appellant of his right to plead not guilty by reason of self-defense;
 2. Accepting the uncorroborated testimony of the complaining witness over that of the Appellant;
 3. Allowing the deposition of Kelton Farmer to substantiate Carew's testimony;
 4. Finding Appellant guilty on insufficient evidence;
- and
5. Depriving Appellant of his right to a full and complete cross-examination of Kelton Farmer.
- Appearance on appeal: Messrs. Kierr, Gainsburgh and Klein of
New Orleans, Louisiana, by Donald S.
Klein, Esquire, of Counsel

OPINION

Appellant's contention that he was prejudiced by the Hearing Examiner's failure to advise him of his right to plead not guilty by reason of self-defense is without merit. A plea of not guilty is a complete denial of responsibility for the act charged. Self-defense is encompassed within its terms, and the Government

has the burden of rebutting that affirmative defense. The Government more than met that burden in this case.

The above findings of fact are in accord with the Examiner's judgment as to the credibility of the witnesses. Questions of credibility are for the trier of the facts and his determination will not be disturbed unless they are clearly erroneous.

The Examiner specifically accepted the version of the incident presented by Carew as corroborated by Farmer's deposition, and rejected the testimony of the Appellant.

Appellant's assertion that he was denied his right to fully cross-examine Farmer is not valid. He had an opportunity to examine the interrogatories prepared by the Investigating Officer and to include any cross-interrogatories he desired. More is not necessary.

With respect to the beginning of the altercation, Appellant contends that Carew first struck him with his flashlight, and, further, that it is illogical to find that one acquainted with the customs and rules of the sea would, without provocation, strike his superior. The Hearing Examiner logically decided this issue against the Appellant. It is unlikely that an older, smaller man would, without provocation, strike a younger and larger man. Even if it were conceded that Carew had struck Williams with a flashlight, Appellant exceeded all bounds of self-defense. Appellant cites *Jones v. Lykes Bros. S S Co., Inc.*, 204 F 2d 815, Ct. App. 1953 to the effect that sailors are not normally genteel and are likely to go further than necessary in overcoming an opponent. The Coast Guard, in the administration of safety statutes, cannot subscribe to those views insofar as the conduct of seamen serving under their documents is concerned. In particular, assaults by seamen on superior officers are considered extremely serious offenses. Such action cannot be condoned by an assertion that sailors are rougher people than those who lead a sedentary life.

ORDER

The Order of the Examiner dated at New Orleans, Louisiana, on 21 October 1957, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 2nd day of June, 1958.

***** END OF DECISION NO. 1041 *****

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