

In the Matter of License No. 195635 and Merchant Mariner's Document
No. Z-100299-D2 and all other Licenses and Documents
Issued to: ARTHUR PICKNEY DUCROS, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

945

ARTHUR PICKNEY DUCROS, 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 2 October 1956, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended the seaman's documents of Appellant upon finding him guilty of misconduct. The specification alleges that while serving as Third Mate on board the American SS REUBEN TIPTON under authority of the license above described, on or about 28 September 1956, Appellant assaulted and battered the Second Electrician.

At 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 voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening

statement and introduced in evidence the testimony of the seaman allegedly assaulted, Second Electrician Hugh McGrory.

Appellant testified in his behalf and called as his witnesses the Master, Chief Mate and a Customs Inspector who was on the ship at the time of the incident.

Appellant testified that he threw the electrician onto the top of a box when he lunged at Appellant.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's seaman's documents for a period of six months. Appellant now has a temporary license and document.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 28 September 1956, Appellant was serving as Third Mate on board the American SS REUBEN TIPTON and acting under authority of his License No. 195635 while the ship was in the port of New Orleans, Louisiana.

On this date, Second Electrician McGrory entered the saloon and loudly demanded that the Chief Mate give McGrory's souvenirs to him immediately. McGrory was under the influence of alcohol at the time. The Master and Chief Mate finally quieted McGrory down enough to make him realize that Appellant rather than the Chief Mate had the key to the room referred to as the souvenir locker.

McGrory left the saloon and followed Appellant and a Customs Inspector to the souvenir locker (a 5 foot by 8 foot room) on an upper deck. On the way, McGrory continued his belligerent attitude. He verbally abused Appellant and threatened to "fix" Appellant or to have another member of the crew "take care of" him. Appellant was much larger and younger than McGrory. McGrory

followed Appellant into the souvenir locker and one of the two seamen closed the door which opened toward the outside into a passageway. The Customs Inspector remained in the passageway. He heard voices in the souvenir locker before McGrory came out bleeding from a small cut on his head. Within the room, McGrory had lunged at Appellant as he was reaching for McGrory's souvenirs. Appellant had grabbed McGrory's arm and caused him to fall on top of a box by his own impetus. McGrory's head was cut when he fell in this manner. There was no further combat between the two seamen.

McGrory returned to the saloon in a violent and irrational condition. He claimed that he had been attacked by Appellant. McGrory verbally abused the ship's officers and refused to obey the Master's order to go below. Some of the crew members managed to take McGrory below after the Master had threatened to call the police to remove McGrory from the ship.

The composite testimony of the Master and Chief Mate shows that McGrory had been extremely belligerent after imbibing alcoholic beverages on several occasions during the past voyage. His reputation in this respect was well established, whereas Appellant was noted for his peaceful demeanor and his ability to get along with the various members of the crew.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken on the following grounds:

1. The penalty is excessive.
2. The decision and findings are contrary to the evidence.
3. Appellant was not aware of the seriousness of the charge and he did not have adequate time to prepare his case.
4. Appellant was not represented by counsel.
5. The decision is contrary to both the law and facts.

APPEARANCE ON APPEAL: George Smill, Esquire, of New Orleans,
Louisiana, of Counsel.

OPINION

The substance of the testimony of Appellant's three witnesses is that McGrory was in a very antagonistic mood due to the fact that he was under the influence of alcohol. The electrician demanded his souvenirs in a loud voice and he used extremely aggravating language both before and after his downfall in the souvenir locker. There is no doubt that McGrory had been extremely troublesome on this voyage as a result of his escapes from sobriety during his frequent binges.

Of course, Appellant would not have been justified legally if he had been provoked into assaulting and battering McGrory because of his urgent insistence that he be given his souvenirs, his abusive language, his lack of sobriety and mere threats unaccompanied by any overt act of hostility.

The gist of McGrory's testimony is that he was pulled into the souvenir locker by Appellant who then slammed the door shut and proceeded to swing at McGrory even after he pleaded with Appellant to stop. Despite this supposedly vicious attack, the evidence indicates that McGrory received only a small cut on the head, left the locker without assistance, and was able to continue disrupting the order of the ship until he was taken below by his shipmates.

With respect to the vital events which occurred in the souvenir locker, my above findings of fact are in accord with Appellant's version of the incident despite the fact that the Examiner stated that he refused to accept Appellant's testimony as the truth. Before stating my reasons for rejecting the Examiner's findings as to credibility, which would ordinarily be accepted since he saw and heard the witnesses, I would like to mention that, accepting Appellant's version, it is clear that he was not guilty of assault and batters because he simply used such force as was reasonably necessary under the circumstances to avert the attack upon him by McGrory. According to Appellant's testimony, he merely steered McGrory in a different direction under his own momentum which had been directed at Appellant, and he did not subsequently touch McGrory. In the absence of the use of excessive force by

Appellant, this was a clear case of self-defense.

So far as the record shows, the Examiner's refusal to believe Appellant was based upon two erroneous premises which, in turn, appear to be predicated upon the Examiner's misconception that Appellant admitted he pulled McGrory into the room where the injury occurred. The Examiner then stated that he did not believe Appellant because the Customs Inspector testified that he did not see McGrory try to hit Appellant (before Appellant pulled McGrory into the room); and that Appellant must have deliberately closed the door to give McGrory a beating because the door could not have been shoved shut from inside the room; the door opened to the outside.

I agree that these two tests of credibility would be logical enough if Appellant had admitted that he pulled McGrory into the room. but since Appellant did not make such an admission, these tests of credibility are so irrational as to justify my refusal to agree with the conclusion of the Examiner which is based upon McGrory's testimony. The Examiner did not record any finding as to credibility based upon the demeanor of the witnesses.

The Examiner also stated that he did not believe Appellant because it was unreasonable to think that McGrory would initiate action against a much larger and younger man. But it seems that such a conclusion is offset by the fact that McGrory's drunken condition was notoriously synonymous with a belligerent mood. Also, he threatened to have Appellant "taken care of." The record is replete with evidence that McGrory was acting irrationally.

Having discarded the Examiner's bases for not believing Appellant and looking at the cold record, it is interesting and enlightening to consider the testimony of the Customs Inspector. Presumably, he was an impartial, disinterested witness.

With respect to the Examiner's evaluation of the customs Inspector's testimony that he did not see McGrory attempt to hit Appellant, it is noted that the Customs official remained outside the room after the door was shut. He stated that he was no movement by either seaman to strike a blow and that there was some discussion on the other side of the door before McGrory came out bleeding. Since the Customs Inspector was in a position to see any indications of a scuffle before the door was closed and he did not

testify that he saw Appellant pull McGrory into the room, there are two very strong conclusions to be drawn from his testimony. First, the fact that he did not see McGrory try to hit Appellant has absolutely so significance since the scuffle did not start until after the door was closed. Secondly, it logically follows that McGrory was not telling the truth or the Customs Inspector would have seen Appellant grab McGrory by the arm. In addition, the intervening discussion heard by the Customs Inspector after the door was closed indicates that events did not happen in quick succession as related by McGrory.

Since it is my opinion the trouble did not become acute until after the men were in the room and the door closed, the question as to who closed the door and why is merely speculative. Of course, if Appellant had pulled McGrory into the room, the only logical inference would be that he slammed the door shut with the intention attributed to him by the Examiner. It is also worth mentioning that the Examiner's implication that Appellant denied having closed the door is not borne out by the record. Appellant was not questioned about this point.

Another reflection upon McGrory's testimony is the very strong probability that he would have been severely injured if he had been battered in the manner he stated in his testimony.

Since Appellant's testimony is so extensively corroborated by that of the customs Inspector, as well as other evidence in the record, I feel compelled to accept Appellant's account of the souvenir locker episode. Therefore, the ultimate finding or conclusion that Appellant assaulted and battered the Second Electrical is reversed.

ORDER

The charge and specification are dismissed. The order of the Examiner dated at New Orleans, Louisiana, on 2 October 1956 is
VACATED

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

Dated at Washington, D. C., this 8th day of January, 1957.

***** END OF DECISION NO. 945 *****

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