

In the Matter of Merchant Mariner's Document No. Z-457559-D1 and
all other Licenses, Certificates and Documents
Issued to: CECILIO ROGRIGUEZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

960

CECILIO RODRIGUEZ

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 24 August 1956, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-457559-D1 issued to Appellant upon finding him guilty of misconduct. The three specifications allege in substance that while serving as an able seaman on board the American SS AMERICAN FLYER under authority of the document above described, on or about 21 April 1956, while said vessel was in the port of Rouen, France, he wrongfully assaulted two members of the crew, Luis P. Ortiz and Jose Celaya, with a deadly weapon: to wit, a knife; and he wrongfully threatened to kill Luis P. Ortiz.

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. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the two seamen named in the specifications as well as that of the seaman on the gangway watch at the time of the incident.

In defense, Appellant offered in evidence his sworn testimony. He stated that he returned to the ship to get some money and took the knife for self-protection because he intended to return to Rouen to meet a woman; Appellant met Ortiz and Celaya when he left the ship; the two seamen used insulting language as they approached Appellant; Ortiz jumped on Appellant when he fell while retreating; the two seamen beat Appellant; he drew his knife and stabbed Ortiz from a prone position.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and three specifications had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z457559-D1 and all other licenses, certificates and documents issued to appellant by the United States Coast Guard or its predecessor authority.

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

FINDINGS OF FACT

On 21 April 1956, Appellant was serving as an able seaman on the American SS American Flyer and acting under authority of his Merchant Mariner's Document No. Z-457559-D1 while the ship was moored alongside a well-lighted pier in the port of Rouen, France.

At approximately 0215 on this date, Appellant was returning to the ship when he met and engaged in an argument with two other members of the crew, wiper Ortiz and ordinary seaman Celaya. Appellant became angry and walked hurriedly toward the ship as the other two seamen continued at a leisurely pace. Appellant went to his room where he obtained a pocket knife with a sharp blade about three inches long. Appellant placed the knife in the right side pocket of his coat and rapidly passed the able seamen of gangway

watch, able seaman Grosso, as he left the ship. Appellant took out the knife as he descended the gangway to the pier, opened the blade and threatened to kill Ortiz and Celaya as they walked toward the gangway. The two seamen were unarmed. Appellant lunged at Celaya with the knife held in Appellant's right hand. Appellant missed Celaya and he ran away. Ortiz struck Appellant with the belt which Ortiz had taken off for this purpose. Appellant and Ortiz then grappled with each other. Ortiz threw Appellant to the ground and held Appellant's right hand while calling for someone to take the knife out of the Appellant's hand. Celaya struck Appellant several blows on the head with fists and a belt. The gangway watchman, able seaman Gorsso, left the ship and took the knife away from Appellant while Ortiz continued to hold Appellant on the ground. There was no further fighting.

At some point during this encounter, Appellant used the knife to cut Ortiz on his right shoulder blade. The wound was about five inches long and required six stitches. Ortiz was taken to a local hospital in an ambulance. Appellant received treatment for bruises near his eyes.

Appellant has no prior record. He had been employed on United States merchant vessels for about twelve years at the time of this incident.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiner's decision is not supported by reliable, probative and substantial evidence.

The Examiner relied heavily on the testimony of the gangway watchman, Grosso, but his testimony is not worthy of belief because Appellant's testimony was that Grosso was not at his post, where he could observe the other three seamen, until Appellant and Ortiz were struggling on the ground. It is reasonable to assume that Grosso would have made an outcry if he had seen Appellant brandishing an open knife when leaving the ship. Grosso testified as he did in order to cover up his own dereliction of duty. Also, the conflict in testimony as to which of Appellant's hands held the knife indicates the unreliability of the evidence against Appellant.

Merely because the Examiner rejected Appellant's claim of self-defense, it does not follow that the Government's witnesses are to be believed.

It is submitted that the order of the Examiner should be reversed.

APPEARANCE: Bernard Rolnick, Esquire, of New York City, by
Milton H. Spiero, Esquire, of Counsel.

OPINION

The Examiner specifically stated that he accepted the testimony of Ortiz, Celaya and the impartial, disinterested witness Grosso with respect to all material facts. Their testimony is mutually corroborative concerning the issue as to whether Appellant was the aggressor or acting in self-defense as he claims. All three testified that Grosso was standing in a position, at the head of the gangway, to see the fight. They also stated that Appellant held the knife in his hand as he advanced toward Ortiz and Celaya rather than that Appellant drew the knife while flat on the ground as stated by Appellant.

There is no merit in Appellant's contention that Grosso's testimony is not worthy of belief because he necessarily would have made an outcry if he had been at his post in time to see the beginning of the incident in question. The fact that Grosso's testimony varied as to whether Appellant held the knife in his right or left hand is not a serious reflection upon his testimony as to the material facts. Ortiz and Celaya consistently agreed with Appellant's testimony that the knife was in his right hand. The over-all testimony of Ortiz, Celaya and Grosso definitely established Appellant as the aggressor.

On the other hand, the Examiner rejected Appellant's testimony on the reasonable grounds that: (1) it seemed to be more than a coincidence that Appellant quarreled with the other two seamen, angrily departed, and a few minutes later returned with a knife which was used to cut one of the seamen; (2) it is very unlikely that Appellant would suddenly start to hurry back to the ship to obtain some money and return to Rouen to meet a woman in view of his testimony that he had left her about an hour and a half earlier

and had taken the time to stop at a bar on his way back to the ship. also, it seems unusual that Appellant should state that he was carrying the knife for self-protection on his second trip into the city although he apparently had not considered it necessary to have a knife on his first trip.

In addition, the Examiner made specific findings as to credibility based on the demeanor of the witnesses. He emphatically commented that he was favorably impressed by Grosso's appearance and manner of testifying.

The Examiner concluded that the reasonable inference to be drawn from the facts was that after Appellant became angry, he obtained the knife for the specific purpose of using it in an assault upon the two seamen with whom he had quarreled. Since such judgment on the part of the trier of the facts was not clearly erroneous, it may not be set aside on appeal. *McAllister v. United States* (1954), 348 U.S. 19. It is my opinion that the conclusion of the Examiner was completely supported by the facts rather than being clearly erroneous.

Appellant initiated the fight by attacking Ortiz and Celaya. Hence, he cannot claim that he acted in self-defense even if he stabbed Ortiz when he was holding Appellant on the ground and Celaya was beating Appellant on the head. Clearly, the primary purpose of the two seamen was to disarm Appellant. This assault was a deliberate and willful act by Appellant. It was not an ordinary fight such as sometimes occurs among seamen. Consequently, Appellant will not be permitted to jeopardize the lives of other seamen by sailing on United States merchant vessels. A seaman with dangerous propensities and proclivities is not equal in disposition to the ordinary seamen. *Boudoin v. Lykes Brothers S. S. Co., Inc.* (1955), 348 U.S. 336. The order of revocation will be sustained

ORDER

The order of the Examiner dated at New York, New York, on 24 August 1956, is AFFIRMED.

A. C. Richmond

Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 16th day of April, 1957.

***** END OF DECISION NO. 960 *****

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