

In the Matter of Merchant Mariner's Document No. Z-1087219 and all  
other Seaman Documents  
Issued to: Santos Roman

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1346

Santos Roman

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

By order dated 8 May 1962 an Examiner of the United States  
Coast Guard at New York, New York revoked Appellant's seaman  
documents upon finding him guilty of misconduct. The single  
specification alleges that while serving as tourist-class elevator  
operator on board the SS UNITED STATES under authority of the above  
described document, on 17 July 1961, Appellant \_\_\_\_\_sted  
a female passenger of tender years, one named (b) (6)(b) (6)(b) (6)(b) (6)  
(b) (6)(b) (6)(b) (6)(b) (6) \_\_\_\_\_, by  
kissing her and by placing his hands upon her  
dress.

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 choosing. He entered a plea of not guilty to  
the charge and specification.

The Investigating Officer made an opening statement following  
which the Examiner granted the Investigating Officer's request to

position of (b) (6)(b) (6)(b) (6)(b) (6) and her mother Mrs. (b) (6) (b) (6). The Appel (b) (6)(b) (6) (b) (6)(b) (6) as present at the tak (b) (6) f epositions which were later offered in evidence by the Investigating Officer. The Investigating Officer also introduced as witness Mr. Montague Banks, junior assistant purser, Mr. Garland Patton, tourist class chief steward, and Mr. E. Kuether, second steward. All persons served on board the SS UNITED STATES at the time of the alleged incident.

Appellant submitted into evidence the deposition of Mr. Raymond Grady, Field Representative of the National Maritime Union. Father Hugh Fitzgerald of St. Michael's Church, Jersey City, N. J., and Kenneth Grady, bell boy on the SS UNITED STATES at the time of the alleged incident, testified as witnesses on the Appellant's behalf. The Appellant exercised his privilege of not taking the stand.

At the conclusion of the hearing, the oral argument of the Investigating Officer and Appellant's Counsel were heard by the Examiner. Both parties were given an opportunity to submit proposed findings and conclusions to the Examiner. The Examiner in his decision found that the charge and specification had been proved. He entered an order revoking all documents issued to Appellant.

#### *FINDINGS OF FACT*

On 17 July 1961, Appellant served as tourist-class elevator operator under the authority of his Merchant Mariner's Document No. Z-1087219 aboard the SS UNITED STATES, a merchant vessel of the United States, while the ship was at sea.

On 17 July 1961, at or about 1600 hours, (b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6)(b) (6), a ten and one-half year old female passenger, b tourist-class elevator nearest to her family's cabin on "A" deck. This elevator was operated by Appellant from 0800 to 1200, 1500 to 1700 and 1900 to 2100. The girl was alone in the elevator with Appellant. She asked that he take her to the promenade deck, which was two decks above the "A" deck. The Appellant, howe sed vator to descend and during its passage kissed (b) (6)(b) (6) (b) (6)(b) (6) on the face t reafter, Appellan up nger and told (b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6)(b) (6) to remain in a corner of the

elevator. [REDACTED] r was discharged Appellant placed his hands upon [REDACTED] person under her dress. Appellant then inform [REDACTED] ribe this incident to her parents.

After [REDACTED] left the elevator she returned to the cabin occup [REDACTED] her parents and told her mother about the incident. The girl desc [REDACTED] he man as the operator of the nearest elevator. Mrs. [REDACTED] went out and confirmed the indications that the ope [REDACTED] n duty was the Appellant. Mr. Montague Banks, a junior assistant purser was then notified.

[REDACTED] described and identified Appellant as her mole [REDACTED] ague Banks, and later to th [REDACTED] ve Officer of the ship. While Mr. Banks was still in the [REDACTED] room, Appellant stuck his head in the room and asked [REDACTED] going on. The girl recognized him as the guilty person. Appellant was the operator of the elevator in question when he was relieved of his duties at about 1630 as a result of this incident.

Appellant has no prior record.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. It urges that the order be reversed on grounds that the identification of Appellant as the perpetrator of the alleged act was improper, that the decision of the Examiner was rendered contrary to the weight of the evidence, and that the corroborating witness, Mr. Montague Banks, was lying.

APPEARANCE: Zwerling & Zwerling, by Irving Zwerling of New York, New York.

#### *OPINION*

Appellant's basic contention is that he was not properly identified as the perpetrator of the alleged act. The essence of his argument suggests that since there was not a so-called "line up" when the identification took place, Appellant's identification was improper. He further contends that the other elevator

operators working the tourist-class elevators placed along side of him and only then should (b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6)(b) (6) have been permitted to make an identification. To (b) (6)(b) (6)(b) (6)(b) (6) ment, Appellant relies on Commandant's [Appeal No. 829](#) which was dismissed because the identification of the perpetrator was limited to the sound of a man's voice. The alleged victim did not clearly see her molester, and the deck where the incident occurred was dark at the time. The situation (b) (6)(b) (6)(b) (6)(b) (6) the present case since the deposition evidence of (b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6)(b) (6), which to a certain (b) (6)(b) (6)(b) (6)(b) (6) orated by h (b) (6)(b) (6)(b) (6)(b) (6) ly indicates that (b) (6)(b) (6)(b) (6)(b) (6) definitely recognized Appellant as her molester. (b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6)(b) (6) had spoken to Appellant several times a day for (b) (6)(b) (6)(b) (6)(b) (6) or to the incident as she was in the habit of using the nearest elevator (b) (6)(b) (6)(b) (6)(b) (6) omenade deck. At the time the incident took place (b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6)(b) (6) was but several feet from Appellant. There is (b) (6)(b) (6)(b) (6)(b) (6) t the elevator was unlighted or that any peculiar circumstances prevented her from seeing his face. Appellant was the scheduled operator at this time and he was on duty when relieved at approximately 1630. On the other hand, there is no evidence that he was not on duty when this incident occurred. Under these facts it would be rather useless to go through the merchants of a "line up", and therefore the fact of its omission is not significant here.

Appellant in his brief also contends that the testimony of a ten and one-half year old child is subject to the closest scrutiny and if uncorroborated should not be accepted. While it is true that in some cases dealing with sexual offenses children of tender ages have had a tendency to be overimaginative and generally unr (b) (6)(b) (6)(b) (6)(b) (6) ord in this case shows nothing in the testimony of (b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6)(b) (6) which could be construed as being tainted with ima (b) (6)(b) (6)(b) (6)(b) (6) asy. The situation presented here is far different from that found in Commandant's [Appeal No. 1168](#), also relied on by Appellant. In that case the decision of the Examiner was reversed by reason of inconsistencies and contradictions concerning the testimony of the infant alleged to have been (b) (6)(b) (6)(b) (6)(b) (6) re no inconsistencies or contradictions in (b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6)(b) (6) testimony. Her description of the circumstances (b) (6)(b) (6)(b) (6)(b) (6) cident is clear, consistent and unyielding. There is also no evidence wh (b) (6)(b) (6)(b) (6)(b) (6) record to support Appellant's allegation that (b) (6)(b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6)(b) (6) was schooled or rehearsed in her testimony b (b) (6)(b) (6)(b) (6)(b) (6) s a matter of fact there is evidence in the record that indicates that both Mrs.

(b) (6)(b) (6) and (b) (6)(b) (6) tried to refrain from talking about the  
(b) (6)(b) (6) as (b) (6)(b) (6) possible.

Appellant's remaining two grounds of appeal can be disposed of summarily.

It is the Commandant's policy to attach great weight to an Examiner's findings insofar as they are based upon his determinations as to the credibility of witnesses. See Commandant's [Appeal No. 829](#). Only when the clear preponderance of all the relevant circumstances show the Examiner's findings as incorrect, will the Commandant look into the credibility of witnesses. In view of the fact that the testimony of all other witnesses produced on behalf of the government corroborated in material respects the testimony of Mr. Montague Banks, it is immaterial what type of personality he has. There is no evidence, aside from the deposition of Mr. Raymond Grady, whose personal opinion captioned Mr. Banks as "liar" and "extrovert", that Mr. Banks was not telling the truth in this instance.

It is clear from the foregoing discussion, that the government carried its burden of proof, that the Examiner's decision was not rendered against the weight of the evidence, and that the Examiner's findings are supported by reliable, probative and substantial evidence.

*ORDER*

The order of the Examiner dated at New York, New York, on 8 May 1962, is AFFIRMED.

D. McG. MORRISON  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D, C., this 8th day of October 1962.

\*\*\*\*\* END OF DECISION NO. 1346 \*\*\*\*\*

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