

In the Matter of Merchant Mariner's Document No. Z-673223
Issued to: ANTONIO JOSE DA SILVA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

734

ANTONIO JOSE DA SILVA

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, 1953, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-673223 issued to Antonio Jose Da Silva upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a fireman watertender on board the American SS VERAGUA under authority of the document above described, on or about 22 August, 1953, while said vessel was in the port of Santiago de Cuba, he wrongfully cut a fellow crew member, Anselmo Perez, with a dangerous weapon.

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 an attorney of his own selection and 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 Master's report of the

injury to Perez, the testimony of Perez and the testimony of the Junior Engineer who was on watch in the engine room when Perez was stabbed.

In defense, Appellant testified under oath in his own behalf. Appellant stated that he had a fist fight with Perez before Appellant went on watch in the engine room at 1950 but that he did not cut Perez. At first, Appellant testified that he did not leave the engine room until he was removed by the police. Later in his testimony, Appellant stated that he left the engine room for about 15 to 20 minutes to go to the head, and, at that time, he overheard someone say that Appellant had hit or killed a man.

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 findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-673223 and all other licenses, certificates, endorsements and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that:

POINT I. The findings of the Examiner were clearly against the weight of the evidence. There were no witnesses to the stabbing except Perez and the person who stabbed Perez. Perez testified that, shortly after the stabbing, he saw Appellant on the upper deck; and also that he did not see the weapon; he did not recognize the voice of the person and he did not see who cut him because the passageway was poorly light. When Appellant told the Junior Engineer that Appellant had either hurt or killed a man, the Third Engineer thought that Appellant was referring to the fight between Perez and Appellant which occurred before 2000.

POINT II. The order of the Examiner was unreasonably severe in the light of Appellant's prior clear record and the sharp dispute as to whether Appellant did commit the offense alleged. At the very most, a suspension or probation would be

more in order with the findings made.

APPEARANCES: Herman Panitch, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

On 22 August, 1953, Appellant was serving as a fireman watertender on board the America SS VERAGUA and acting under authority of his Merchant Mariner's Document No. Z-673223 while the ship was preparing to depart from Santiago de Cuba, Cuba.,

At approximately 1945 on this date, Appellant and Perez, who was serving as an able seaman, engaged in a heated argument followed by an exchange of several blows. Other members of the crew separated the two men and they both went on watch at about 1950 to stand the 2000 to 2400 watch. Appellant's watch station was in the engine room with the Third Assistant Engineer, the Junior Engineer and other personnel. Perez relieved the gangway watch.

At 2145, Perez went to his quarters to get some cigarettes. Both his room and Appellant's room opened off a dimly lighted passageway below the main deck. Perez stopped to get a drink of water from the fountain which was in the passageway near his room. As Perez was turning around after getting a drink of water, someone stabbed Perez in his abdomen with a knife and spoke the Spanish word "toma" which means "take this" or "take that ". Perez did not recognize the voice and he could not tell who the person was because it was so dark in the passageway. But Perez recognized the man as the appellant when he went through the door at the end of the passageway and onto the weather deck which was illuminate by the cargo lights. No one else was in the passageway at the time of the stabbing. Perez went as far as the doorway which was 20 to 25 feet from the water fountain and saw Appellant at the top of the ladder leading to the deck above. Appellant invited Perez to come out and fight. As a result of his wound, Perez summoned assistance and he was hospitalized until 3 September, 1953. He was still receiving out-patient treatment more than a month after the date of

the injury.

Shortly before stabbing Perez, Appellant had left his watch station after telling the Junior Engineer that he was going to the head. Appellant returned to the engine room in about 15 to 20 minutes and told the Junior Engineer that he, Appellant, had hurt or killed a man. The Junior Engineer did not think that Appellant was serious when he said this. Shortly afterwards, the local police removed Appellant from the ship and held him in custody until he posted bond in the amount of \$300.

There is no record of prior disciplinary action having been taken against Appellant during his eight years at sea on vessels of the United States Merchant Marine.

OPINION

The only issue on the merits of the case is whether the evidence is sufficient to establish the identity of the Appellant as the person who attacked Perez. Although Perez did not recognize Appellant at the instant he stabbed Perez, Appellant was identified by Perez when he went through the door between the dark passageway and the lighted deck. This was only about 20 or 25 feet from the scene of the attack and there was no evidence that anyone else was in the passageway at the time. In fact, Perez testified that no one was present except himself and the person who stabbed him. Again, Appellant was identified as the assailant when Perez went to the passageway door and saw a man at the head of the ladder leading up to the next deck. Perez stated that he was certain the man he saw on these two occasions was the Appellant.

The Junior Engineer testified that Appellant had left the engine room at some time before 2100; and when Appellant returned, he stated that he had hurt or killed a man. Prior to obtaining the testimony of the Junior Engineer, Appellant repeatedly denied that he had left the engine room. But after the Junior Engineer testified, Appellant was recalled as a witness. He then maintained that he had left the engine room to go to the head; and while he was gone, he had overheard someone say that he Appellant had hit or killed a man.

This self-contradictory testimony by the Appellant casts considerable suspicion upon his credibility. At the same time, the

testimony of the Junior Engineer indicates that Appellant had the opportunity to commit the alleged offense. the testimony of the Junior Engineer and Perez appears to be much more reliable than Appellant's testimony. In accord with this evaluation of the testimony, the Examiner accepted the testimony of Perez as to Appellant's identification as the assailant; the Examiner accepted the testimony of the Junior Engineer as to what Appellant said when he returned to the engine room; and the Examiner rejected Appellant's repeated denials that he had committed the offense. It has been stated in many judicial opinions that the Examiner, as the trier of the facts, is the best judge as to the credibility of witnesses whom he observes as they testify in his presence. I agree that the testimony of Perez and the Junior Engineer constitutes substantial evidence to support the allegations contained in the specification.

I attach no significance to the fact that the junior engineer though that Appellant was talking about his earlier fight with Perez when appellant returned to the engine room and said that he had hurt or killed a man. Regardless of what the Junior Engineer's reaction was to this statement by Appellant, it was an admission which further corroborates the testimony of Perez that he was certain as to the identity of the person who attacked him.

Having concluded that the specification was proved by the weight of the evidence, I do not think there are any circumstances which merit mitigation of the revocation order. Every indication is that this was a premeditated attack without immediate provocation. In addition, it was an attack with a deadly weapon and without any sign of warning to Perez. The statutory duty to promote the safety of lives and property at sea will not permit the Coast Guard to risk the possibility of the recurrence of such conduct by Appellant.

ORDER

The order of the Examiner dated at New York, New York, on 2 October, 1953 is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 8th day of April, 1954.

***** END OF DECISION NO. 734 *****

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