

In the Matter of Merchant Mariner's Document No. Z-112278-D2(R)
Issued to: WILLIE WILLIAMS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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WILLIE WILLIAMS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-19

By order dated 22 January, 1954, an Examiner of the United States Coast Guard at Long Beach, California, revoked Merchant Mariner's Document No. Z-112278-D2(R) issued to Willie Williams upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a cook and baker in the service of the American SS MORMACMAR under authority of the document above described, on or about 31 December, 1953, while said vessel was in a domestic port of the United States, he assaulted and battered a member of the crew, Felix Trisan, with a dangerous weapon; to wit, a sharp instrument.

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 testimony of Felix Trisan and Kenneth F. Huntington who was an employee of the shipowner and witnessed the encounter between Appellant and Trisan.

In defense, Appellant offered in evidence his own sworn testimony and that of a Miss Campbell who was at the bar where the two combatants had been shortly prior to their fight. Appellant stated that Trisan came from behind a car and hit Appellant; Trisan pulled out a small dagger; Appellant ran around the car and broke his whisky bottle to defend himself; Appellant grabbed Trisan from behind and pinned down his arms; and Trisan was cut by the broken bottle while he was struggling to get free.

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-112278-D2(R) and all other licenses, certificates 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 the findings and order are not supported by the evidence, the findings are contrary to the testimony, and the order is extremely harsh and an unjust deprivation of livelihood. Appellant further claims that at no time did he testify that he struck Trisan with the broken bottle so Trisan must have gotten cut when he was squirming to get free from Appellant while he had his arms wrapped around Appellant; the fact that Appellant was not charged with using a razor (although Trisan seemed positive, at the time of the hearing, that the weapon was a razor) indicates that Trisan became convinced that it was a razor at some time after his original statement; Trisan testified that no one else was present when Appellant started slashing with the razor but Mr. Huntington testified that there were three men in the group; Trisan's testimony that he and Appellant rode back to the dock in the same automobile was shown by Appellant to be false; and this and the many other inconsistencies in Trisan's testimony impeached his credibility. In conclusion, Appellant contends that although there was not insufficient evidence to find him "guilty", the evidence

does not warrant the Examiner concluding that this offense alone justifies the revocation of Appellant's document; that Appellant's prior record does not indicate a fighting disposition; and that his prior record should not be used against him in this case because it does not contain any offenses of a similar nature.

APPEARANCES: Michael J. Yelovich, Esquire, of San Pedro,
California of Counsel.

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

FINDINGS OF FACT

On 31 December, 1953, Appellant was in the service of the American SS MORMACMAR and acting as a cook and baker under authority of his Merchant Mariner's Document No. Z-112278-D2(R) while the ship was at a Standard Oil Company dock in San Pedro, California.

Shortly after 1700 on this date, Appellant and Trisan left the 409 Club in San Pedro where they had both been drinking but they had not been sitting together. It is not clear whether the two men returned to the vicinity of the ship in the same automobile or different automobiles. In any event, the two men arrived at the gate to the dock at about 1730.

At this time, Appellant was wearing a suit coat in addition to a topcoat or an overcoat; or he was wearing only a suit coat. Trisan was not wearing any type of coat over his shirt.

Trisan passed through the gate and walked down the dock towards the ship with a bottle of whisky in his left hand. Appellant was with the ship's Chief Cook as they proceeded through the gate in the direction of the ship.

At some point, Appellant suddenly attacked Trisan with a straight razor. When Trisan put up his right arm to protect himself, he received a cut about six inches long on his right arm and a seven inch cut on his hand. Trisan fell down, broke his bottle of whisky and received a third cut approximately two inches long on the right side of his stomach. As a result of these injuries, Trisan was hospitalized for a week. Appellant was not

injured and he returned to the ship but was later arrested by the local police before the ship sailed.

Appellant's prior record consists of three offenses of absence over leave and two offenses of failure to join.

OPINION

The points raised on appeal are considered to be without merit. Rather than a prolonged discussion of all Appellant's contentions, it is sufficient to note several factors which very strongly indicate that Appellant was not acting in self-defense as he contends. Mr. Huntington saw the disturbance from the watchman's shack which was about 150 feet from the scene of the cutting. Mr. Huntington testified that the dock was semi-illuminated and that a man wearing an overcoat or a topcoat wielded a weapon which Mr. Huntington thought was a razor or a knife. Due to the poor lighting on the dock, it is quite conceivable that Mr. Huntington mistook Appellant's suit coat for an overcoat or a topcoat. (Appellant himself testified that he had on a suit coat and that Trisan was not wearing any coat.) But it is very improbable that Mr. Huntington thought the person with the weapon had on a topcoat or overcoat if he did not have any coat on at the time. Also, it seems almost certain that Appellant would have received some injury if Trisan had used a dagger; that Trisan could not have received his injuries while his arms were pinned by Appellant; that Appellant's account of the incident is not accurate; and that Appellant could not have been acting in self-defense (when he cut Trisan) if Appellant was able to pin down Trisan's arms by grabbing him from behind.

Mr. Huntington's testimony supports Appellant's statement that he was walking down the dock with the Chief Cook. Trisan's failure to notice the presence of the Chief Cook is understandable under the circumstances. It would have been advisable to obtain the testimony of the Chief Cook but this was probably not done due to the fact that the ship sailed a short time after the incident in question. Appellant did not request, at any time, that the testimony of the Chief Cook be obtained. The testimony of one of the two known disinterested witnesses corroborates Trisan's testimony that Appellant was the aggressor and attacked Trisan with a razor.

The issue as to whether Appellant and Trisan returned to the dock in the same automobile is not resolved by Miss Campbell's testimony. She testified in agreement with Appellant's testimony that he did not return to the ship in the same automobile with Trisan. But she also stated that a person named "Willie" (Appellant's first name) got in the car with Trisan; and that she had met Appellant prior to meeting him in the 409 Club on 31 December.

It also seems clear that Trisan's right arm and hand were cut by Appellant's razor. The third cut was the direct result of Appellant's attack whether the cut was made by the razor or by broken glass when Trisan fell and broke his bottle of whiskey.

The testimony of Appellant and Trisan was directly conflicting as to who the aggressor was. The Examiner, as the trier of the facts who heard and observed the two men when they testified, was in the best position to judge the credibility of the witnesses and he substantially rejected the material portions of Appellant's testimony and accepted Trisan's testimony. In the absence of a disclosure in the record of an irrational test of credibility by the Examiner, his choice with respect to conflicting testimony will not be questioned on appeal.

For these reasons, I conclude that the findings and order are supported by the evidence regardless of whether Appellant's prior record is taken into consideration. Although I agree with Appellant's contention that his prior record should not be used against him in this case because such record does not contain any offenses of a similar nature, the order of revocation will be sustained because of the vicious nature of the attack upon Trisan and the serious injuries received by him.

ORDER

The order of the Examiner dated at Long Beach, California, on 22 January, 1954, is AFFIRMED.

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

Dated at Washington, D. C., this 2nd day of August, 1954.

***** END OF DECISION NO. 756 *****

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