

In the Matter of Merchant Mariner's Document No. Z-738764-D2
Issued to: WILLIE B. BELL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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WILLIE B. BELL

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.

On 10 November 1954, an Examiner of the United States Coast Guard at Baltimore, Maryland, revoked Merchant Mariner's Document No. Z-738764-D2 issued to Willie B. Bell upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as a messman on board the American SS FLORENCE LUCKENBACH under authority of the document above described, on or about 29 October 1954, while said vessel was at Mayaguez, Puerto Rico, Appellant assaulted and battered a member of the crew, Virgil L. Richardson, by striking him (First Specification); Appellant assaulted and battered Vilgil L. Richardson by shooting him with a dangerous weapon, a pistol (Second Specification); and Appellant unlawfully had a pistol in his possession (Third Specification).

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 - including the possibility of revocation of his document. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. Appellant entered a plea of "guilty" to the charge and each specification proffered against him after having been informed that by a plea of guilty he admitted the charge and all the facts stated in the specifications.

Thereupon, the Investigating Officer made his opening statement and Appellant made a statement in mitigating of the offense. He stated that he went to his room after engaging in a fight with Richardson in the messhall; while running towards his room, Appellant looked back and saw Richardson grab a fire axe; Appellant got his loaded pistol out of his locker and went outside the door to his room; Appellant warned Richardson not to come closer; Appellant fired downward in order to scare Richardson when he continued to approach with the fire axe; and the shot struck Richardson in the leg.

Two witnesses then testified to assist the Examiner in determining the extent of the order imposed by him. One of these witnesses stated that Appellant and Richardson were arguing while standing in the passageway; and that they threatened to kill each other before the shot was fired.

At the conclusion of the hearing, having 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 plea to the three specifications. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-738764-D2 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:

1. Appellant did not understand the seriousness of the charge or meaning of a plea of guilty since he has no knowledge of legal proceedings. Appellant had been led by statements of the Investigating Officer to believe that his document would not be revoked if Appellant plead guilty.

2. Appellant and Richardson were good friends but they returned to the ship in a highly intoxicated condition. Appellant was not the aggressor and he acted in self-defense by using the pistol only after he was in fear of great bodily harm. Appellant aimed at the deck after warning Richardson not to come closer with the axe. The bullet ricocheted off the deck and struck Richardson.

3. Since Appellant's suitcase had been packed by someone else, he did not know the pistol was in it until he was on board the ship. Appellant did not intend to violate the law by having the pistol in his possession.

4. It is the duty of the officer on watch to be alert in order to prevent trouble when members of the crew return intoxicated.

5. The order of revocation is excessively harsh since Appellant has had no prior trouble during nine years at sea; he has a good reputation for law and order; and the revocation of his document deprives Appellant of his livelihood. It is requested that the Examiner's decision be set aside and a rehearing granted with the aid of counsel.

APPEARANCES: Messrs. Kane and Spellman of service of Seattle, Washington by Joseph S. Kane, Esquire, of Counsel.

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

FINDINGS OF FACT

On 29 October 1954, Appellant was serving as a messman on board the American SS FLORENCE LUCKENBACH and acting under authority of his Merchant Mariner's Document No. Z-738764-D2 while the ship was at Mayaguez, Puerto Rico.

At about 0030 on this date, Appellant and Richardson returned to the ship in a condition of intoxication. Shortly thereafter, these two seamen had a fight in the messhall and Richardson pinned Appellant down across a chair. Appellant managed to escape and ran to his room. He got a revolver, which he had brought on board, out of his locker and went out into the passageway. Richardson was also in the passageway and he had a fire axe in his possession. The two men argued and threatened each other. Appellant told Richardson not to come any closer but he approached Appellant with the fire axe. When Richardson was some distance (which cannot be determined from the record) away, Appellant fired the revolver. The shot struck Richardson in his right leg and disabled him for 4 or 5 days.

There is no record of prior disciplinary action having been taken against Appellant. He stated that he has been going to sea since 1946.

OPINION

As indicated above, Appellant was informed by the Examiner, at the commencement of the hearing, that one of the five possible results of the hearing was revocation of Appellant's document (R.7). Appellant was also told about this possibility at the time the Investigating Officer served the charge and specifications on Appellant (R.16). There is nothing contained in the record to support the contention that Appellant was led to believe his document would not be revoked if he entered a plea of guilty.

Concerning representation by counsel, the Investigating Officer as well as the Examiner informed Appellant of this right (R.8, 15). After Appellant indicated that he had considered the matter of retaining counsel, the Examiner asked Appellant if he desired counsel and Appellant replied in the negative (R.8). Hence, Appellant was fully advised of his rights in this respect.

It is also shown above that the Examiner fully explained to Appellant the significance of a plea of guilty to the charge and specifications (R.11). After this was done, Appellant was arraigned (R.12, 13). Then the Examiner again verified that Appellant understood that he admitted all the facts alleged when he

plead guilty. After this exhaustive repetition, Appellant must have understood the meaning of his plea; and the seriousness of the charge in this case is perfectly obvious from a reading of the Second Specification which alleges assault and battery by shooting Richardson with a pistol. For these reasons, it is not believed that Appellant was prejudiced by his lack of knowledge concerning legal proceedings.

It is also contended that Appellant's conduct was justified because he acted in self-defense when he shot Richardson. Appellant's statement at the hearing that he went back out into passageway after getting the pistol out of his locker negates this contention. A person is required to retreat, to the extent that it is consistent with his own safety, before using a deadly weapon in self-defense. Appellant should have stayed in his room and locked the door. If Richardson attempted to break into the room, Appellant would have then been justified, on the basis of self-defense, in using necessary force, including the pistol, to repel Richardson. A person is not deprived of the right to defend himself against serious bodily harm as a result of voluntarily engaging in mutual combat with another person. It was no excuse for Appellant's conduct that he was intoxicated; that he did not intend to injure Richardson but only intended to scare him; and that the officer on watch did not act soon enough to maintain order. The significant facts are that Appellant had no right to use the pistol in self-defense at the time he shot and injured Richardson. Since Appellant's statement was not inconsistent with his plea of guilty to the Second Specification, it was not necessary to introduce evidence in support of this specification.

It is also noted that the claim of self-defense, which is first raised on appeal, does not ring true because of the time element involved. If Richardson were in hot pursuit when Appellant ran to his room, Appellant would not have had time to do all the things he said he did before firing the pistol. That Appellant was not in immediate danger is substantiated by the testimony of the witness who heard the exchange of threats between Appellant and Richardson.

The First Specification is dismissed because Appellant's statement was inconsistent with his plea of guilty. There is no evidence in the record to contradict Appellant's statement that Richardson struck the first blows in the messhall, and that Richardson overpowered Appellant at that time.

Concerning the Third Specification, any initial ignorance by Appellant, that the revolver was in his suitcase, did not justify the retention of the revolver after Appellant became aware of its presence. As stated by the Examiner, Appellant should have turned

the revolver over to the Master for the duration of the voyage.

The Examiner stated that he considered Appellant's prior clear record before imposing the order of revocation. Appellant's livelihood is a secondary consideration to the necessity of keeping American ships free of seamen who unjustified shoot at their shipmates. If Appellant were permitted to continue his livelihood at sea, he would have many more opportunities to participate in incidents similar to the one alleged in the Second Specification.

The hearing was conducted in a fair and impartial manner by the Examiner. Appellant was afforded full opportunity to plead "not guilty" and present evidence in his behalf. Since Appellant apparently thought that it would have served no purpose to plead "not guilty," it is my opinion that it would not serve any useful purpose to grant a rehearing. Hence, such request is denied. the Second Specification alone is sufficiently serious to sustain the order of revocation.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 10 November 1954 is AFFIRMED.

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

Dated at Washington, D.C., this 5th day of July, 1955.