

In the Matter of License No. 182260 and all other Licenses
Issued to: WILLIAM J. CORSTON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

869

WILLIAM J. CORSTON

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 10 August 1955, an Examiner of the United States Coast Guard at Long Beach, California, suspended License No. 182260 issued to William J. Corston upon finding him guilty of misconduct base upon a specification alleging in substance that while serving as Chief Engineer on board the American SS SWEETWATER under authority of the license above described, on or about 22 January 1955, while said vessel was at Sasebo, Japan, he assaulted the Junior Third Assistant Engineer 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. Although advised of his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered him.

Thereupon, the Investigating Officer and Appellant made their opening statements. The Investigating Officer introduced in evidence the testimony of the Junior Third Assistant Engineer and rested his case.

In defense, Appellant offered in evidence his sworn testimony. Appellant testified that he took out his knife in self-defense when the Junior Third Assistant Engineer, a former professional boxer and wrestler by his own admission, drew his fist as though to strike Appellant. Statements by the Master and Second Assistant Engineer were admitted in evidence in lieu of obtaining their depositions. It was stipulated that the testimony of the First Assistant Engineer would have corroborated that of the Appellant.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusion, the

Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's License No. 182260, and all other licenses issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - two months outright suspension and four months suspension on probation until twelve months after the termination of the outright suspension.

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

FINDINGS OF FACT

On 22 January 1955, Appellant was serving as Chief Engineer on board the American SS SWEETWATER and acting under authority of his License No. 182260 while the ship was in the port of Sasebo, Japan.

On this date, between 1900 and 2000, the Junior Third Assistant Engineer was arguing with the Second Assistant Engineer and threatening him with physical injury if he did not stand his watches. The Junior Third Assistant Engineer weighed 215 pounds and was formerly a professional boxer and wrestler. Appellant went out into the passageway when he heard the noise. Appellant ordered the Second Assistant to go to his room.

The Junior Third Assistant then complained to Appellant, in a loud and boisterous manner, about having to stand watches for the other engineering officers. When the two men were about four feet apart, the Junior Third Assistant raised his fist in a position to strike Appellant who then took out a pocketknife, opened the blade and said he would kill the Junior Third Assistant if he threatened to hit Appellant. The latter did not make any gesture to use the knife. The Master arrived on the scene and he sent the two officers to their respective quarters.

At the time of this incident, Appellant's weight was approximately 205 pounds. The next evening Appellant apologized to the Junior Third Assistant for drawing the knife.

Appellant's prior record consists of an admonition in 1951 for neglect of duty.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant admits he drew the knife but he reiterates his testimony that he did not commit an assault since he was acting in self-defense against an anticipated blow or blows by a professional boxer. Appellant states that he intended to bluff the Junior Third

Assistant in order to keep him from attacking Appellant.

OPINION

The evidence indicates that Appellant did not have any intention of using the pocketknife unless he was struck by the Junior Third Assistant's fist. Although provocation alone would not justify Appellant's conduct, the evidence is clear that the Junior Third Assistant made the first threatening gesture when he raised his fist, at close range, in a position to strike Appellant. Undoubtedly, Appellant had good cause to fear immediate bodily harm especially since he had just heard the Junior Third Assistant threatening the Second Assistant.

The following appears in 5 Corpus Juris 748:

"The use of deadly weapons to repel a simple assault is not ordinarily justified, but it may be where the use of such weapon is necessary to prevent the threatened injury, as where there is a great disparity in the physical strength of the parties."

The Junior Third Assistant was not much larger than Appellant but he had been a professional boxer. The use of fists has been considered, at times, to be the use of deadly weapons while pocketknives are not necessarily deadly weapons. See definitions in Volume 11 Words and Phrases. Considering all of these authorities in connection with the Junior Third Assistant's background as a professional fighter, it is my opinion that Appellant's limited use of the knife in protection of his person did not constitute an assault. Therefore, the conclusion or ultimate finding that the specification was proved is reversed.

ORDER

The specification is dismissed. The order of the Examiner dated at Long Beach, California, on 10 August 1955 is VACATED.

A.C. RICHMOND
Vice Admiral, U.S. Coast Guard
Commandant

Dated at Washington, D.C., this 27th day of March, 1956.