

In the Matter of Merchant Mariner's Document No. Z-367453-D1 and all
Onseaman No. Z-367453
Issued to: MARCOS RIOS RIVERA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1174

MARCOS RIOS RIVERA

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

By order dated 3 February 1959, 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 bedroom steward on board the United States SS CONSTITUTION under authority of the document above described, on 4 June 1958, Appellant wrongfully molested a female passenger, one Carol McDonald, by kissing and touching her.

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 choice. 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 application to take depositions of Carol McDonald and her parents. Her father being unavailable only the depositions of Carol and her mother were actually taken. The Appellant's counsel was present at the taking of these depositions which were later offered in evidence by the Investigating Officer. The Investigating Officer then introduced in evidence the testimony of the ship's doctor who had examined Carol, his nurse, and one Frank McGuinness, the person in charge of the personnel of the Steward's Department on the CONSTITUTION. Appellant did not testify or present any evidence in defence.

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

FINDINGS OF FACT

On 4 June 1958 Appellant was serving as bedroom steward on board the United States SS CONSTITUTION and acting under authority of his Merchant Mariner's

Document No.z-367153-D1 while the ship was at sea.

Appellant was assigned to the cabin occupied by Carol McDonald, age 11, and her parents. On the evening of 4 June 1958 Carol left her parents in the dining room after dinner and returned to the cabin occupied by her family. The Appellant was in the room with her. She knew him as Mark, the steward assigned to the room. After asking her to show him where she had lost a tooth the Appellant put his arms around Carol, kissed her, hugged her and put his hand under her dress. Carol told him her mother and father were about due to return to the room. Appellant then left after making her promise not to tell anyone what had happened.

After Appellant left the room Carol immediately returned to the dining room and told her parents what Mark had done. They reported the incident to the ship's officers and Carol was then examined by the ship's doctor. He found no physical signs of molestation. The Appellant was relieved of his duties and another steward was assigned to the McDonald cabin.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It urges that there was no proper identification of the Appellant as the perpetrator of the alleged act and that there was no confrontation of the Appellant by the complainant. Secondly it is contended that the finding is not supported by substantial evidence since there was no corroboration of the testimony of the complainant.

On these grounds reversal is requested or alternatively that the case be sent back for a new trial.

APPEARANCE: Irving Zwerling, Esquire, of New York City

OPINION

The two points urged by Appellant on appeal really raise a single question as to the sufficiency of the evidence. In effect it is urged that there is not sufficient evidence to show that an offense was committed or, if it was committed, that Appellant was the person who committed it. Reduced to its essentials the evidence consisted of the following: the child, Carol testified that she was, on the evening in question, alone in her stateroom with the steward whose name was Mark, that she knew this was his name since he had previously told her it was, that he asked to see where she had lost a tooth, that when she showed him where she had lost her tooth he put his arms around her, hugged her and put his hand under her dress, that she reported this incident to her mother and that thereafter she did not see Mark again since a new steward was assigned to her cabin. Carol's mother testified that Carol reported the incident to her, that Carol was upset, pale, nervous and shaking, that she had indeed lost a tooth, that Carol was apprehensive and nervous the remainder of the trip, that only one

bedroom steward served them until this incident and that his name was Mark, and that after the incident another steward was assigned to their room. Frank McGuinness, who was appellant's superior in the Steward's Department, testified that Appellant was assigned to the cabin occupied by the McDonalds, and that after the incident he was relieved of his duties and another steward was assigned to their cabin. The ship's doctor testified to his examination of Carol and that there were no physical signs of molestation, that the child did not appear to be emotionally upset, irrational or in a state of fantasy.

The nurse, the doctor, and the child's mother all testified as to the details of the incident as told to them by Carol. Such testimony is of course hearsay and adds nothing to the weight of Carol's testimony. The examiner properly granted the Appellant's motion to strike that part of the doctor's testimony concerning the details of the incident and the identity of the person involved. Similar testimony by the nurse and Carol's mother should also be disregarded. However the mother's testimony that Carol immediately reported it incident to her and identified the person involved is admissible evidence.

Appellant points out that Carol and Appellant were never brought face to face for her to identify him. Though such confrontation is of course desirable to avoid cases of mistaken identification it is not mandatory. In this case Appellant knew who his accuser was, his counsel was able to observe her and he had full opportunity to cross-examine her when the deposition was taken. Additionally there was other sufficient proof that Appellant was in fact the person Carol said molested her. She described him by his name, Mark, and as the room steward who was assigned to her room. Mrs. McDonald identified their room steward by the same name. The witness McGuinness identified Appellant as the person assigned to the McDonald's stateroom. The identification was strengthened somewhat by Carol's testimony that after she reported the incident she never saw the person who molested her again and that after that they had a new steward. This is corroborated by her mother's testimony and is connected up by McGuinness' testimony that following the incident Appellant was relieved of his duties and a new steward assigned to the McDonald stateroom. Since it is apparent that Carol knew Appellant from previous contact with him and absent any question as to her opportunity or ability to observe the man who had molested her there is thus substantial proof that Appellant was sufficiently identified.

Carol's testimony is clear and straightforward, without inconsistencies. It is corroborated by her mother's testimony as to the timely complainant and by Carol, her departure from and return to the dining room, her pale and upset condition, her loss of a tooth and Appellant's presence at about the time it was lost, and Carol's continuing apprehensiveness for the remainder of the voyage. There is thus in the record reliable and substantial evidence to prove the charge. The Appellant has presented no evidence to dispute it.

ORDER

The order of the Examiner dated 3 February 1959 at New York, New York is AFFIRMED.

J A Hirshfield

Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 15th day of June 1960.