

In the Matter of Merchant Mariner's Document No. Z-289749 and all
other Seaman Documents
Issued to: RICHARD A. HEILMAN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1438

RICHARD A. HEILMAN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title Code of Federal Regulations 137.30-1.

By order dated 12 July 1963, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months outright plus four months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an able seaman on board the United States SS EVIBELLE under authority of the document above described, on 25 November 1962, Appellant assaulted and battered crew member Arthur Wood with a coffee cup.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of Wood, the seaman alleged to have been assaulted, and two other eyewitnesses. Wood testified that there was one eyewitness who did not testify at the hearing.

In defense, Appellant offered in evidence his testimony and that of able seaman Coalson. Appellant testified that when he saw Wood holding a broken bottle with jagged edges as he approached Coalson and the door, Appellant hit Wood with a coffee cup because Appellant believed that Wood intended to "butcher" Coalson with the bottle.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved.

FINDINGS OF FACT

On 25 November 1962, Appellant was serving as an able seaman on board the United States SS EVIBELLE and acting under authority of his document while the ship was at sea.

About 2300 on this date, Appellant and two other crew members, able seaman Coalson and bedroom steward Wood, were playing cards and drinking in the recreation room which is about fifteen feet by eight feet in size. Coalson became angry with Appellant, quit the game, and picked up the money for a side bet of 50 cents apiece which he had with Wood. The latter started an argument with Coalson when he refused to give Wood half of the side bet money.

At this time, Coalson was closest to the door and Appellant was the farthest away from the door in such a position that Wood would have to pass between Appellant and Coalson, with his back to Appellant, in order to reach the door. As the argument continued, Wood picked up a wine bottle and held it by the neck. An ordinary seaman tried to take the bottle away from Wood but he pushed the seaman aside, said he would fix anyone who started a fight with him, broke the bottle, and started to walk toward the door and Coalson, holding the remains of the jagged-edged bottle in his hand. Appellant picked up a coffee mug and warned Wood that he would have to turn his back on the coffee mug if he went after Coalson.

Wood continued on a short distance until he was approximately between the other two seamen and not more than six feet from Coalson. Appellant thought that Wood intended to attack Coalson with the broken bottle although Wood made no gesture with the bottle to indicate this. Appellant struck Wood on the back of the head with the coffee mug. The mug was shattered but the blow apparently did not bother Wood since he turned and grappled with Appellant, cutting him several times with the bottle. Coalson joined in when called by Appellant and was also cut. Wood's only injury was a bump on the head from the coffee mug.

Appellant's prior record consists of an admonition and three probationary suspensions during the last 20 years for offenses of failure to join his ship and failure to perform his duties.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

1. It was incorrect to conclude that the conduct of Appellant was not justified because Wood made no aggressive gesture with the broken bottle as he moved toward Coalson and the door.
2. As a matter of law, Appellant's conduct was justified under the circumstances on the basis of his belief, whether correct or not, that Wood was about to attack Coalson with a broken bottle which could inflict serious bodily harm or even

death.

3. Appellant's conduct was reasonable under the prevailing circumstances and, therefore, he was not guilty of assault and battery.

APPEARANCE: Dorfman, Pechner, Sacks and Dorfman of Philadelphia, Pennsylvania, by Sidney J. Smolinsky, Esquire, or Counsel.

OPINION

The determination as to whether Appellant was guilty of assault and battery is dependant on whether or not Coalson or Appellant had a reasonable basis for believing that Coalson was in danger of being attacked by Wood. A person is not guilty of assault and battery for using force in defense of another to the same extent that the defended person would be justified in defending himself; it is not required that the danger to the third person be actual if the defender has reason to believe, and does believe, that it is actual and imminent. 6 C.J.S. Assault and Battery secs. 19, 93.

The Examiner decided that Appellant was guilty because he was not justified in concluding that Wood was going to attack Coalson when Wood started to walk in the general direction of Coalson and the door. The other witnesses expressed a divided opinion, based Wood's conduct, as to whether they thought he intended to leave the room or attack Coalson. The Boatswain testified that he could not tell which it was. the ordinary seaman had the impression that Wood wanted to leave the room. Coalson stated that he was leaving the room but he turned around when the bottle was broken because he wanted to see whether Wood would attack Coalson since they had been arguing. Coalson added that he was in fear of being attacked, he constantly kept watching the bottle in Wood's hand, and things happened very rapidly after the bottle was broken. Wood testified that he simply wanted to leave the room and picked up the bottle to use as a weapon to defend himself if he were attacked by Appellant and Coalson. Wood did not explain why he feared an attack by both seamen when his argument had been with Coalson and when there were other members of the crew present to prevent this.

Considering all the circumstances, it is my opinion that Appellant had reason to believe that Coalson was in imminent danger of suffering grave bodily injury from the piece of jagged-edged bottle held by Wood as he approached Coalson. There was an argument between the two seamen, with anger encouraged by the drinks they had, and Wood was still trying to get his share of the side bet money from Coalson. The Examiner rejected Wood's testimony that the bottle broke accidentally and found that Wood deliberately

broke it after having pushed the ordinary seaman aside when he attempted to get the bottle away from Wood. then, regardless of whether Wood intended to use the broken bottle as an offensive weapon or only in defense if necessary, he advanced with this dangerous weapon in his hand after having been warned by Appellant not to do so. Appellant committed the alleged offense when Wood was within six feet of the unarmed Coalson.

From Coalson's point of view, he had good reason to feel that he was being threatened by Wood and, therefore, to be in fear of being attacked since there was no other apparent motive for Wood to resort to the use of a dangerous weapon. There was no basis for Coalson to assault Wood since the former had the money which they had been arguing about. Consequently, Appellant's conduct was justified in terms that Coalson would have been justified in acting as Appellant did.

Considering the matter from the Appellant's position, he knew that neither he nor Coalson had any personal interest in preventing Wood from leaving the room. In addition, Appellant had intimated to Wood that Appellant would strike Wood with the coffee mug if he continued to advance on Coalson with the broken bottle. The implication was that Appellant would not attempt to detain Wood if he walked toward that door and Coalson without the weapon. When Wood then continued to advance with the broken bottle in his hand, I think that it was reasonable for Appellant to believe that the only purpose of the bottle was to use it to injure Coalson. On this basis also, Appellant's conduct was justified in terms of the applicable legal standards mentioned above.

The conclusion that Appellant was guilty of assault and battery is set aside. The charge and specification are dismissed.

ORDER

The order of the Examiner dated at New York, New York, on 12 July 1963, is VACATED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 23rd day of December 1963.