

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-1283706-D1
Issued to: Edward VELEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2010

Edward VELEZ

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

By order dated 20 March 1974, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for 1 month outright plus 2 months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an ordinary seaman on board the SS SEATRIN MAINE under authority of the document above captioned, on or about 16 December 1972, Appellant did wrongfully assault and batter with his fists a fellow crewmember, Edward Collins, while the vessel was in San Francisco.

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

The Investigating Officer introduced in evidence five depositions and a log entry from the vessel.

In defense, Appellant offered in evidence various documents relating to suspension and revocation proceedings against the document of the alleged victim, Edward Collins.

The Judge rendered a written decision in which he concluded that the charge and specification had been proved. He entered an order suspending all documents, issued to Appellant, for a period of 1 month outright plus 2 months on 12 months' probation.

The entire decision and order was served on or about 11 April 1974. Appeal was timely filed on 17 April 1974.

FINDINGS OF FACT

On 16 December 1972, Appellant was serving as an ordinary seaman on board the SS SEATRIN MAINE and acting under authority of his document while the ship was in the port of San Francisco. At

approximately 0300, Appellant and Edward Collins were involved in an altercation which resulted in serious injuries to both, including a bullet wound in Appellant's face and multiple stab wounds in Collin's chest. Police officers arrived on the scene, a point along the Embarcadero adjacent to the vessel, in the course of normal patrol duties. They discovered Collins lying on his back, straddled by Appellant, who was striking him about the face, shoulders and chest with his fists. A bloody knife was removed from Appellant's pocket and a gun owned by Collins was found a few yards away. A second knife was discovered a few hundred feet away by other police officers some four hours later. Upon the arrival of the police officers, Appellant attempted flight and was shortly apprehended. He was found to be somewhat incoherent and in a state of near shock. Collins was in shock and in such a weakened condition as to necessitate assistance from the police officers in getting to his feet.

BASES OF APPEAL

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

- (1) the finding that Appellant exceeded the limits of self-defense is not supported by substantial evidence;
- (2) Appellant's physical condition made him incapable of knowingly and wrongfully committing assault and battery;
- (3) Appellant's actions were justifiable and consonant with a reasonable belief that his life was in danger; and
- (4) The order of the Administrative Law Judge is overly severe under the circumstances.

APPEARANCE: Schulman, Abarbanel and Schlesinger, New York.

OPINION

I

The evidence of record is devoid of facts bearing upon inception of the altercation in question. As to the progression of the fight, the evidence shows only that each man was seriously injured by a deadly weapon belonging to the other. The evidence does show, however, how the incident terminated. The police officers, upon whose arrival Appellant fled, witnessed him striking Collins, who lay defenseless on the ground, about the head and shoulders. Appellant speculates as to the events immediately preceding the officer's arrival. Unfortunately there is no

evidence on the record to substantiate these speculations. The evidence does show that Appellant was found striking a defenseless man and, a prima facie case of assault and battery was established by this evidence. Appellant failed to rebut this and offered no evidence tending to support the defenses he now puts forth. If Appellant had indeed been the original victim of an assault by Collins, the judge was clearly warranted in finding that he exceeded the reasonable limits of self-defense.

II

As to Appellant's physical condition and state of mind, the evidence clearly demonstrates that he had the capacity to not only strike Collins, by also attempt flight and resist arrest. While it is possible that an inference of mental incapacity might be drawn from the same evidence, it cannot be stated as a matter of law that the judge's findings in this regard were arbitrary and capricious. Where the totality of the evidence may reasonably give rise to conflicting inferences, the choice of the trier of fact will not be disturbed on appeal when, as in this case, it is supported by substantial evidence of a reliable and probative nature.

III

The meritless nature of Appellant's third basis for appeal is demonstrated in the above discussion of his first contention. Once Collins had been rendered defenseless - and he was defenseless when the police officers arrived on scene - Appellant could no longer reasonably fear for his own safety.

IV

Assault and battery is a serious offense which strikes at the very essence of the purpose for suspension and revocation proceedings, the promotion of safety. An offense of this nature would normally warrant a far more burdensome order than that handed down in this case. The judge took full account of all mitigating circumstances in framing his order and the result is certainly not overly severe.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 20 March 1974, is AFFIRMED.

E. L. PERRY
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D. C., this 25th day of Sept. 1974.

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