

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-384891 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: EUGENE M. SILVAS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1456

EUGENE M. SILVAS

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 November 1963, an Examiner of the United States Coast Guard at Corpus Christi, Texas revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as Second Cook on board the United States SS SAN JACINTO under authority of the document above described, on 3 September 1963, Appellant assaulted and battered messman Mejia with a dangerous weapon, to wit: a knife.

At the hearing, Appellant was represented by a union patrolman. A plea of not guilty was entered to the charge and specification.

The Investigating Officer introduced in evidence the testimony of messman Mejia. By stipulation, the testimony given by eight other crew members at the Coast Guard Investigation on 5 September was admitted in evidence. No other evidence was submitted by the

defense.

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 3 September 1963, Appellant was serving as Second Cook on board the United States SS SAN JANCINTO and acting under authority of his document while the ship was at Norco, Louisiana.

On the morning of this date, Appellant talked with messman Mejia concerning complaints about his unsatisfactory work. Such reports came to Appellant in his capacity as a union delegate.

Both seaman then went ashore and drank intoxicants to some extent. They returned to the ship at approximately 1530 to get under way at 1600 and had an argument on the fantail before Mejia went to work in the pantry to get ready for the evening meal.

Shortly prior to 1600, Appellant, Chief Cook Gomes, and Chief Steward Hopkins were in the passageway near the entrance to the officers' saloon. The latter two seamen were trying to persuade Appellant to stay away from this area near the pantry in order to avoid the possibility of further difficulties between Appellant and Mejia. The officers' saloon is also adjoined to the pantry.

At this time, Mejia came into the saloon from the pantry and started to pass the other entrance to the saloon outside of which the Chief Cook, Chief Steward and Appellant were standing. There was a brief exchange of unfriendly words before Mejia threw a basket of fruit at Appellant who then quickly left the Chief Cook and Chief Steward and approached Mejia, a much smaller man than Appellant. Mejia ran into the pantry with Appellant in immediate pursuit carrying a knife of undetermined description which he had picked up off a shelf in the saloon. While in the pantry, Appellant cut Mejia with the knife inflicting a severe wound about eight inches long in his right side. (There is no evidence that anybody else was in the pantry and there was no other apparent means by which the wound could have been inflicted.)

Mejia backed away from the pantry into the crew's messroom (on

the opposite side of the pantry from the officers' saloon) in the presence of oiler Oliver as well as messman Weller and Polk. Mejia was bleeding profusely and holding his side. Appellant was standing at the entrance to the crew's messroom from the pantry but no weapon was seen in his possession. An ambulance was called and Mejia was hospitalized for about two weeks. He was not fit for sea duty when he testified at the hearing a month after being injured.

Local authorities and the Chief Mate questioned Appellant before the ship got under way. He admitted having committed the offense, showed how he got the knife and cut Mejia, but insisted that he did not know what happened to the knife. The Chief Mate could not find it. The Chief Mate was also told by Appellant that he had to this in order to make the messman leave Appellant alone. Appellant was ordered to pack his belongings and leave the ship.

Appellant has no prior record.

BASES OF APPEAL

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

1. Appellant was deprived of a fair and impartial hearing when counsel for Mejia was permitted to act as interpreter for Mejia when he answered cross-interrogatories at the hearing. Both men were interested parties at the hearing because of a civil claim by Mejia against the owners of the vessel. The value of the claim would be enhanced by making out a strong case against Mejia at the hearing and establishing that he did not measure up in disposition to the ordinary men in the calling. Counsel for Mejia had no right to take an active part in the hearing except to advise his client. The rights of Appellant should have been fully protected at a hearing which resulted in the loss of his livelihood at sea.

2. The evidence relied on to prove that Appellant stabbed Mejia is so contradictory as to have no probative value. Even Mejia admitted that he saw no knife at the time he claims to have been cut by Appellant which in the passageway. Chief steward Hopkins and Chief Cook Gomes, who were in the passageway at the time, stated emphatically that they saw no knife or stabbing at any

time. No.knife was seen by any of the other witnesses or found later.

In conclusion, it is submitted that the case should be dismissed or remanded for a new hearing to establish all the facts.

Appearance on appeal: John J. Pichinson of Corpus Christi, Texas by Thomas W. Mack, Esquire, of Counsel.

OPINION

Consideration of the testimony of the witnesses, without regard to that of messman Mejia, convinces me that the only logical conclusion, which accounts for the serious injury suffered by Mejia, is that he was cut by Appellant with a knife. Therefore, there is substantial evidence that Appellant is guilty of the offense alleged.

The impropriety of Mejia's counsel acting as interpreter for Mejia (when he answered cross-interrogatories) could not have constituted material prejudice, thereby depriving Appellant of a fair and impartial hearing, because this testimony does not contain anything prejudicial to Appellant that was not covered by the direct examination of Mejia which was conducted without an interpreter. In addition, Mejia's testimony has been given no significant weight since its lack of clarity makes it very confusing. This is probably due to a combination of the language barrier involved when he testified and some degree of intoxication at the time he was cut. Furthermore, the use of the interpreter was not prejudicial since there is nothing in the record to indicate that nay part of the testimony was misinterpreted to convey an erroneous meaning or impression. See *Lujan v. United States*, 209 F. 2d 190 (10th Cir. 1953).

Although there is no evidence that anyone saw Appellant cut Mejia with a knife or saw the weapon at any time, the circumstantial evidence against appellant is extremely strong. The Chief Steward and Chief Cook were with Appellant on one side of the pantry and saw him chase Mejia into the pantry. The Chief Cook testified that he know of no means by which a person was likely to

be cut accidentally in the pantry. Mejia was next seen by three other witnesses on the opposite side of the pantry as he emerged after having been cut. Testimony by these witnesses also indicates that Appellant was right behind Mejia and that nobody else was in the pantry. One of these three witnesses, messman Polk, stated that he saw the cut and that Mejia said he had been stabbed by Appellant.

Mejia's testimony is not clear as to whether he was in the pantry or passageway when he was cut. His best testimony as to this seems to be his statement, "I don't remember". According to the Chief Mate, Appellant said it happened either in the pantry or the saloon. The indications from the evidence as a whole are that it took place in the pantry. This location fully accounts for the failure of the Chief Steward and Chief Cook to see the attack from their position in the passageway and explains why they would not necessarily have seen the weapon which, according to the Chief Mate's testimony, Appellant said he hurriedly picked up off a shelf in the saloon just prior to chasing Mejia into the pantry. With respect to the failure to find the weapon, the Chief Mate stated that he went on watch as soon as Appellant left the ship and the Master testified that there was no subsequent search made to locate it.

Any other explanation as to how Mejia might have been injured, other than by Appellant with a knife, was eliminated by the admissions made by Appellant to the Chief Mate soon after the incident occurred. These admissions are referred to above. Although Mejia's testimony is not dependable when considered above, it is substantially consistent with the other evidence which points to Appellant as the guilty party.

I agree with the Examiner that, despite Appellant's prior clear record, this vicious and unjustified attack indicates such dangerous inclinations on the part of Appellant that he should be deprived of the right to go to sea as an employee on United States merchant vessels.

ORDER

The order of the Examiner dated at Corpus Christi, Texas, on 20 November 1963, is AFFIRMED.

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

Signed at Washington, D. C., this 10th day of June, 1964.

***** END OF DECISION NO. 1456 *****

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