

IN THE MATTER OF LICENSE NO. 320000 MERCHANT MARINER'S DOCUMENT
Z-288617 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Charles R. SCHMIDT

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1764

Charles R. SCHMIDT

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 22 June 1967, an Examiner of the United States Coast Guard at New York, N. Y., suspended Appellant's seaman's documents for seven months plus six months on eighteen months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as second mate on board SS AMERICAN TRAPPER under authority of the document and license above captioned, on or about 22 February 1967, Appellant, at Hoboken, N. J.:

- (1) assaulted and battered another member of the crew, one Calvin L. Singletary, and
- (2) created a disturbance by resisting arrest by Hoboken, N. J. police officers.

At the hearing, Appellant did not appear. The Examiner entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of AMERICAN TRAPPER, the testimony of a Hoboken, N. J., police officer, and the deposition of Calvin L. Singletary.

Appellant offered no evidence in defense, but the Investigating Officer presented a sworn statement which Appellant had asked him to present.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of seven months plus six months on eighteen months' probation.

The entire decision was served on 20 June 1968. Appeal was timely filed on 26 June 1968, and was perfected on 17 February 1969.

FINDINGS OF FACT

On 22 February 1967, Appellant was serving as second mate on board SS AMERICAN TRAPPER and acting under authority of his license and document while the ship was in the port of Hoboken, N. J.

On the date in question, Appellant returned to his ship after drinking ashore and, when he had gone to the officers' saloon with Calvin L. Singletary, assaulted and battered Singletary by striking him. When local police came to the vessel to arrest Appellant he resisted arrest. It required five police officers to subdue him and get him off the ship.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the evidence is not sufficient to support the finding of the Examiner, and that the order of suspension is excessive.

APPEARANCE: Standard, Weisberg, Heckerling & Rosow, New York, N. Y., by Arron J. Balley, Esq.

OPINION

I

When Appellant attacks the Examiner's findings as unsupported by the evidence he starts from uncertain grounds. He deliberately chose not to appear for hearing, and the evidence adduced in his behalf was presented by the Investigating Officer at his request.

This need not have been done. Neither did the Examiner have to notify Appellant that the testimony of Singletary was to be taken by deposition, once Appellant chose not to appear for hearing. The Investigating Officer has no duty to produce or offer evidence which a party deigns not to offer for himself, nor is a person charged entitled to be notified of dates, times, and places of proceedings when he has chosen not to appear at the time and place specified for hearing.

II

The sole ground for attack on the evidence upon which the Examiner relied for his findings is that no adequate motivation on the part of Appellant was established by the testimony of the victim-witness.

Knowledge of a motive may be useful to an investigator trying to discover the identity of an unknown perpetrator of an act. No motive need be established, however, for the perpetrator of an act who is identified by a reliable eyewitness as having done the act. Singletary's testimony, inherently plausible, was accepted by the Examiner. It thus becomes irrelevant to consider why Appellant did what he did.

It may also be said that had the Examiner been faced with two otherwise equally probable versions of an event he might have looked to a person's motive or lack of it to determine which was more probable. Here, the Examiner had the sworn testimony of Singletary, evidence of Singletary's injury, and testimony of a police officer as to Appellant's violence, against a second hand

denial that Appellant had been the aggressor. The choice was easy to make and is easy to support on appeal.

III

Appellant protests the severity of the order, pointing to his relatively good record, with no action against his document in the last seventeen years.

The Table of Average Orders, at 46 CFR 137.20-165, shows a six month suspension for a first offense of assault and battery, and Appellant was found not only to have committed assault and battery but to have forcibly resisted five policemen. The Examiner's order is not unreasonable and there is no reason to disturb it.

ORDER

The order of the Examiner dated at New York, N. Y., on 22 June 1967, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 16th day of May 1969.

INDEX (SCHMIDT)

Assault (including battery)

Motivation need not be established

Hearings

Absence from

Motivation need not be established

Investigating Officer has no duty to adduce evidence on behalf

of person charged not appearing for hearing
Taking of witness' deposition when person charged fails to
appear
When person charged fails to appear, no duty to notify him of
dates, times and places of processing

Investigating Officer

No duty to adduce evidence in behalf of party not appearing
for hearing

Misconduct

Motivation need not be established

Order of Examiner

Assault and battery, appropriate for
Commensurate with offense
Cumulative offenses, effect of
Not disturbed when appropriate

Revocation or suspension

Basis of
Cumulative offenses as justifying
For assault, appropriateness of order
Held not excessive
Misconduct as grounds for

***** END OF DECISION NO. 1764 *****

[Top](#)