

In the Matter of Merchant Mariner's Document No. Z-975860-D1 and
all other Seaman Documents
Issued to: CHARLES ERNEST ROBERTS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1189

CHARLES ERNEST ROBERTS

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 10 August 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 specification found proved alleges that while serving as an officers' steward on the United States SS UNITED STATES under authority of the document above described, on or about 10 February 1959, Appellant wrongfully had marijuana cigarettes in his possession.

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

The Investigating Officer introduced in evidence an entry in the ship's Official Logbook, the depositions of two Bremerhaven officials, and the testimony of the two crew members with Appellant when these three seamen were arrested on 10 February 1959.

No evidence was submitted on behalf of the Appellant.

At the conclusion of the hearing, the Examiner decided that the charge and specification had been proved. He then entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 10 February 1959 and earlier dates, Appellant was serving as an officers' steward on the United States SS UNITED STATES and acting under authority of his Merchant Mariner's Document No. Z-975860-D1.

While at Le Harve, France prior to 10 February, Appellant purchased a quantity of bulk marijuana from a stranger for \$8.00. (The substance was represented by the seller to be marijuana and Appellant, who had smoked marijuana, believed that it was such.) Appellant made nine cigarettes out of the bulk marijuana and had them in an eyeglass case when the ship arrived at Bremerhaven. Appellant intended to use the cigarettes "to get in high spirits" because he "could not stand a great amount of alcohol." (See statement signed by Appellant on 10 February 1959 before Bremerhaven police authorities.)

On the evening of 10 February 1959 while the ship was at Bremerhaven, Germany, Appellant had the eyeglass case containing the cigarettes in his possession when he took a taxicab with two other members of the crew. Leaving the dock area, the cab was stopped and searched at the customs check point. The eyeglass case and its contents were found in the cab. The searching authorities recognized the fact that the cigarettes were made from marijuana. All three seamen were detained by the police until Appellant admitted that the cigarettes belonged to him. Appellant signed a statement containing this admission and also explaining the above circumstances under which he had purchased the marijuana at Le Havre. The other two seamen were then released by the local police.

In lieu of standing trial for a narcotics offense, Appellant was given the option of making a \$100 contribution to the German Society for the Rescue of the Shipwrecked. This offer was made, in accordance with the German law, by the Prosecuting Attorney with

the acquiescence of the District Judge. Appellant readily accepted this option and paid the \$100 contribution. He told the local authorities that he knew he had violated the law by having this "stuff," the same as in the United States, and he was sorry. The case was closed and Appellant returned to the ship.

Appellant's prior record consists of an admonition in 1953 for assault.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that there is a complete lack of evidence to support the conclusion that the substance was, in fact, marijuana. The Examiner's decision is based on irrelevant and remote inferences since there is no evidence that Appellant had ever seen marijuana in bulk form; payment of the \$100 permits no adverse inference since it would have cost Appellant more than that if he had stood trial even though acquitted.

Substantial evidence is more than suspicion. It is equated with inferences of fact drawn by reasonable men.

Appellant prays that the order be reversed and his document reinstated.

APPEARANCE: Sheldon Tabak of New York City, of Counsel

OPINION

Although there is no definite proof that the substance in question was marijuana, I agree with the Examiner's conclusion that the only reasonable inference to be drawn from the material evidence, as set forth in the above findings of fact, is that the cigarettes were made from marijuana.

There is no evidence that an analysis was made of the cigarettes. Nevertheless, the two responsible Bremerhaven officials, whose depositions were taken, indicated that there was no question about the nature of the substance. Appellant had prior contact with marijuana and his statements to the local officials

show that he was certain the substance was marijuana. If he had not been, it is extremely doubtful that he would have paid \$8.00 for a quantity of something which was only sufficient to make nine cigarettes. Appellant repeatedly stated that he had violated the law by having these cigarettes in his possession. In his statement of 10 February to the police, Appellant related details as to his acquisition of the marijuana and why he intended to use it. This was not necessary in order for him to pay the \$100 contribution to be released.

For these reasons, it is my opinion that a prima facie case of wrongful possession of marijuana was made out against Appellant. Any conclusion to the contrary would be inconsistent with the evidence in the record. Appellant made no attempt to rebut the evidence presented.

ORDER

The order of the Examiner dated at New York, New York, on 10 August 1959, is AFFIRMED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 22nd day of August 1960.

***** END OF DECISION NO. 1189 *****

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