

In the Matter of Certificate of Service No.: C-44658
Issued to: LEANDRO CRUZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

446

LEANDRO CRUZ

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 2 May, 1950, an Examiner of the United States Coast Guard at New York City revoked Certificate of Service No. C-44658 issued to Leandro Cruz upon finding him guilty of "misconduct" based upon three specifications alleging in substance, that while serving as a refrigerating engineer on board the American S. S. EXPORTER, under authority of the document above described, on or about 16 August, 1946, he wrongfully had in his possession:

First Specification:	****certain narcotics, to wit, 15 grains of marijuana.
Second Specification:	****300 cartons of cigarettes without an export license.
Third Specification:	****66 pairs of women's nylon hose without an export license.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. He was advised of his right to be represented by counsel of his own selection and he elected to have a Coast Guard Officer act in his behalf. He entered a plea of "not guilty" to the charge and each specification. The specifications were then amended by adding the words "in the Port of New York."

Thereupon, the Investigating Officer made his opening statement. He then introduced in evidence the testimony of a Special Agent of the Narcotics Bureau of the Treasury Department and a certified copy of a U.S. Customs Laboratory Report purported to show the analysis of the marijuana found in Appellant's possession. At this point, both parties rested their case.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of specifications No. 1,2 and 3; and he entered an order revoking Certificate of Service No. C-44658 and all other licenses, certificates, and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that it is unfair and contrary to established procedure to punish a man on a presumption based on hearsay evidence; that the arresting officer was not present at the hearing and Appellant had never before seen the Special Agent who testified; and that the facts as stated do not make out a case against Appellant.

Based upon my examination of the Record submitted, I hereby make the following:

FINDINGS OF FACT

On or about 16 August, 1946, Appellant was serving as a refrigerating engineer on board the American S. S. EXPORTER, acting under authority of his Certificate of Service No. C-44658, while the ship was in the Port of New York.

On this date, Appellant was apprehended by a Customs Officer while leaving the ship with fifteen grains of marijuana in his possession. He stated that the substance found was the remainder

of marijuana cigarettes he had been given to smoke at a party the night before.

A subsequent search of Appellant's locker on board the ship disclosed that he also had 300 cartons of cigarettes and 66 pair of women's nylon hosiery but had no export license for any of these items.

There is no record of any previous disciplinary action having been taken against Appellant by the Coast Guard.

OPINION

It is contended on appeal that the testimony of the only witness is hearsay evidence and, consequently, it is not sufficient on which to base a finding of "guilty".

This witness was a Special Agent of the Narcotics Bureau of the Treasury Department. He testified that he spoke to Appellant on 19 August, 1946, and, at that time, Appellant told him substantially what is set out in the findings of fact above. The Customs Officer who had arrested Appellant was a temporary employee and could not be located in order to obtain his testimony.

It is my opinion that the Examiner was justified in basing his findings and conclusions on the uncorroborated testimony of the witness. The statements made by Appellant to the witness were admissions of facts from which guilt may be inferred. The statements did not constitute a confession because they were not direct acknowledgments of Appellants guilt of any crime. He merely admitted acts and conduct which tend to establish the truth of the charge. Although the hearsay rule ordinarily excludes statements made out of court offered as proof of the facts asserted, the admissions of a party are received as original evidence against him, where inconsistent with the claim which he asserts in the action, whether he is the plaintiff or the defendant. *French v. Hall (1886)*, 119 U.S. 152.

Admissions are not conclusive of the facts stated but are open to explanation and contradiction. *Riggs v. Lindsay (1813)*, 7 Cranch (11 U.S.) 500. In the present case, there was no evidence

whatsoever introduced by Appellant to rebut or explain his admissions. The tests of credibility applicable to other forms of evidence apply to admissions and the Examiner specifically stated in his opinion that he was greatly impressed by the manner in which the witness testified. Admissions may be given sufficient weight to establish facts and overcome presumptions. In view of the Examiner's acceptance of the testimony of the witness and the absence of any contradictory evidence offered on behalf of Appellant, I think that it was correct to give Appellant's admissions sufficient weight to establish the facts and overcome any presumption of innocence to which Appellant was originally entitled.

Because of Appellant's admission that he had marijuana in his possession, the U.S. Customs Laboratory analysis report is not required to establish this fact; but it is helpful, together with other evidence, in verifying that Appellant was attached to the EXPORTER on or about 16 August, 1946.

CONCLUSION

It seems hardly necessary to repeat again that any association of merchant seamen with narcotics, marijuana or other prohibited drugs, is considered to be a very serious offense and deserving of the order of revocation of all the offender's merchant marine papers. The first specification alone is sufficient to justify the order imposed. The evidence that Appellant had secreted the cigarettes and hosiery on board the ship aggravates the offense and further warrants the order of revocation.

ORDER

The Order of the Examiner dated 2 May, 1950, should be, and it is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated At Washington, D. C., this 14th day of July, 1950.

***** END OF DECISION NO. 446 *****

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