

In the Matter of Merchant Mariner's Document No. Z-573229
Issued to: BRITT MOSE LOVETT

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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BRITT MOSE LOVETT

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 10 December, 1951, and Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-573229 issued to Britt Mose Lovett upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as messman on board the American SS HIBUERAS under authority of the document above described, on or about 7 December, 1951, while said vessel was in the port of New Orleans, Louisiana, he wrongfully had a quantity of marijuana in his possession.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements. Appellant admitted that loose marijuana had been found in the pocket of the trousers he was wearing when searched but he stated that he had not worn these clothes for three or four months and other seamen had borrowed them. He denied knowledge of the presence of the marijuana and said he did not use it.

The Investigating Officer then introduced in evidence the testimony of seven witnesses in order to trace the substances, which were found in Appellant's clothing, from the time the search took place to the point where it was ascertained by analysis that these identical substances contained some marijuana.

In defense, Appellant testified under oath in his own behalf. He stated that the marijuana must have gotten into his clothing when he had loaned them to other seamen. The pieces of clothing loaned were said to have been his gray suit, gray cotton work trousers and tan topcoat; and Appellant had not had time to get this clothing cleaned since he had loaned it to other seamen.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-573229 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the marijuana did not belong to Appellant; that he has no knowledge as to how it got into his clothing aboard the vessel; and that Appellant is not an addict nor does he have any use for marijuana.

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

FINDINGS OF FACTS

On 7 December, 1951, Appellant was serving as messman on board

the American SS HIBUERAS and acting under authority of his Merchant Mariner's Document No. Z-573229 while the ship was docked at New Orleans, Louisiana.

On this date, a U. S. Customs searching party boarded the ship. Port Patrol Officers Henry L. Clesi and Albert J. Signorelli conducted a search of Appellant's quarters under the direction of Inspector Victor A. Lecroix. The two Port Patrol Officers found particles of a substance resembling marijuana in more than five pieces of clothing which were either in Appellant's locker or elsewhere in his quarters. Among the pieces of clothing in which the suspect fragments were found, there was a tan topcoat, a gray suitcoat, a blue coat, a pair of gray work trousers and a pair of blue trousers. (The presence of the latter was verified by Appellant on R, 15.) Officers Clesi and Signorelli emptied the pockets of these pieces of clothing into a piece of paper and turned the package over to Inspector Lecroix who was present at the time of the search.

Customs Agent Philip M. Caldwell was called aboard the ship and he was present when Appellant returned aboard and was searched. Appellant was wearing the trousers which matched the gray suitcoat in his quarters. In the hip pocket of these gray trousers, there were particles similar to loose marijuana. The contents of this pocket were put in a separate piece of paper and turned over to Inspector Lecroix. At this time, Appellant admitted ownership of all the clothing involved but he stated that he did not know where the marijuana came from or anything about its presence in his clothing.

Subsequent analysis of the contents of the two pieces of paper by Chemist Fred L. Collins of the U. S. Customs Laboratory at New Orleans, Louisiana, disclosed that both packages contained marijuana as well as other vegetable matter, dirt and lint. The total weight of the contents of the two packages was seven grains. The individual weight of the marijuana was not determined.

There is no record of any prior disciplinary action having been taken against Appellant during his six years at sea.

OPINION

Appellant claims that he has no knowledge as to how the marijuana got in his clothing. His only explanation was that other seamen who had borrowed his gray suit, gray work trousers and tan topcoat must have put marijuana in the pockets of these pieces of clothing. But even if this explanation were accepted, it would only account for the marijuana which was found in three pieces of clothing in Appellant's quarters and the gray suit trousers he was wearing when searched. It would not account for the marijuana located in other clothing in Appellant's quarters. Specifically, it does not include the blue coat mentioned by Officer Signorelli and the blue trousers in which Officer Clesi testified that he found the largest amount of the marijuana-like substance. Hence, as indicated by the Examiner in his decision, it was not necessary for him to make a determination either accepting or rejecting Appellant's testimony that he had loaned some particular items of clothing to other seamen.

The prima facie case made out against Appellant was based on the proof that there was loose marijuana in the pockets of various pieces of clothing which belonged to him and the logical inference from such possession that Appellant had knowledge of the presence of the marijuana in his belongings. This inference may more accurately be described as a rebuttable presumption which had the effect of putting the burden on Appellant of going forward with the evidence to prove that he did not knowingly have marijuana in his possession. Appellant failed to do this specifically except with respect to the gray suit, gray work trousers and tan topcoat. Therefore, the Examiner properly found that the prima facie case was not affected insofar as the marijuana in the blue coat was concerned. The blue trousers also belong in this same category since the evidence with respect to those trousers was not specifically controverted even though Appellant testified that there was a pair of blue trousers in his quarters.

Having heard and observed Appellant while he testified, the Examiner was the best judge as to Appellant's credibility and the weight to be given his testimony. If the Examiner had rejected Appellant's uncontradicted testimony about having loaned some of the clothing containing marijuana, the rebuttable presumption would not have been overcome with respect to any of the clothing in which marijuana was found. *Rosenberg v. Baum (1946)*, 153 F.2d 10. But without going into this phase of the case, the Examiner simply rejected Appellant's repeated denials of knowledge concerning the

marijuana discovered in any of his clothing. Therefore, there is no doubt that the prima facie case must prevail with respect to the blue coat, blue trousers and other items of clothing containing evidence of marijuana concerning which Appellant did not specifically deny knowledge of the presence of marijuana.

CONCLUSION

The prima facie case made out against Appellant is based on the unrebutted presumption that Appellant had knowledge of the presence of marijuana in at least two pieces of his clothing which were aboard the ship. This is adequate to find that there was a "wrongful" possession of marijuana; and, consequently, that the charge and specification were proved.

ORDER

The order of the Examiner dated 10 December, 1951, should be, and it is, AFFIRMED.

Merlin O. Neill

Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 16th day of April, 1952.

***** END OF DECISION NO. 555 *****

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