

In the Matter of Merchant Mariner's Document No. Z-285239
Issued to: RUDOLPH VAN PEEPLES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

713

RUDOLPH VAN PEEPLES

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 1 September, 1953, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-285239 issued to Rudolph Van Peebles upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a fireman-watertender on board the American SS VIRGINIA LYKES under authority of the document above described, on or about 31 August, 1953, while said vessel was in the port of New Orleans, Louisiana, he wrongfully had a quantity of marijuana in his possession.

Appellant was served with the charge and specification at about 1500 on 31 August, 1953, and he was advised of his right to be represented by counsel at the hearing.

At the commencement of the hearing at 1000 on 1 September, 1953, Appellant was given a full explanation of the nature of the proceedings, the seriousness of the offense alleged, the rights to which he was entitled and the possible results of the hearing.

When advised of his right to be represented by counsel of his own selection, Appellant stated that he did not have money to pay an attorney but that he did not need an attorney if he was given a fair and just hearing. The Investigating Officer opposed an adjournment because the ship was scheduled to sail on the afternoon of 1 September, 1953. Appellant 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 stated that he was innocent since he did not know anything about the presence of the marijuana.

The Investigating Officer then introduced in evidence the testimony of several U. S. Customs employees and Appellant's roommate on the ship.

In defense, Appellant testified in his own behalf. He repeatedly stated that he was innocent; that he had put his gear in the locker on 15 May without searching the locker; that he wore the shirt (in which marijuana was found) ashore while drinking but he did not use or obtain marijuana. Appellant also insisted that the only time he had smoked marijuana was in 1942 or 1943 and that there was no action taken against his document for sleeping on watch while he was serving on the SS LIBERTY GLO or at any other time.

At the conclusion of the hearing, having heard the argument of the Investigating Officer 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-285239 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:

POINT I. The evidence does not show that Appellant had marijuana in his possession. The evidence against Appellant is purely circumstantial and

it is very remote. The flakes of marijuana were found in a shirt which belonged to Appellant's roommate and Appellant had returned the shirt to his roommate two weeks before it was found to contain marijuana. Traces of marijuana were found on the paper lining in Appellant's locker. But this locker had been used by a number of other seamen before Appellant and he had put his gear into the locker without cleaning the locker. This evidence is not sufficient to prove such a serious offense which is the basis for the revocation of Appellant's document.

POINT II. Appellant did not receive a fair hearing. He did not have time to prepare his case or to obtain counsel because the hearing was conducted on the day after the marijuana was found. Since Appellant had been drinking most of the night before the hearing, he was not aware of the seriousness of the offense or the nature of the proceedings and he was not competent to defend himself. The Examiner should not have conducted a hearing on such a serious charge in view of Appellant's drunken condition at the hearing. For these reasons, Appellant is entitled to a new hearing so that a proper defense can be made.

APPEARANCES: James I. McCain, Esquire, of New Orleans,
Louisiana, of Counsel.

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

FINDINGS OF FACT

From 15 May, 1953, until 31 August, 1953, Appellant was serving as a fireman-watertender on board the American SS VIRGINIA LYKES and acting under authority of his Merchant Mariner's Document No. Z-285239 while the ship was engaged on a foreign voyage.

On 31 August, 1953, the U. S. Customs authorities conducted a routine search of the ship. Appellant was sitting on his bunk when a Port Patrol Officer entered to search the forecandle which Appellant shared with another member of the crew, Masakatsu Inouye. The Port Patrol Officer found fragments of marijuana in each of the two pockets of a sport shirt hanging on a hanger on a line in the forecandle. The shirt belongs to Appellant's roommate but it had been loaned to Appellant and worn by him on several occasions while ashore in foreign ports during the voyage. Inouye had not used the shirt since Appellant returned it about ten days before the discovery of marijuana in its pockets. Upon searching Appellant's locker after it was unlocked by Appellant, the Port Patrol Officer found loose fragments of marijuana and a marijuana seed on top of the paper lining covering the middle shelf of the locker. Analyses of the three separate samples (taken from each of the two pockets of the shirt and the locker shelf) disclosed particles of marijuana leaves and stems in each of the samples.

Appellant's prior record consists of a two months suspension on nine months probation in April, 1944, for failing to perform duties and sleeping on watch while serving on board the SS LIBERTY GLO.

OPINION

The fact that loose particles of marijuana were lying on a open shelf in Appellant's locker was definitely established by the testimony of the Investigating Officer's witnesses and this fact was not contradicted by Appellant. The locker had been used continuously for three and a half months by Appellant and it was locked when the Port Patrol Officer entered the forecandle. These facts alone are sufficient from which to draw the reasonable inference that Appellant had knowing and wrongful possession of marijuana. It is improbable that the loose, exposed, marijuana particles would have remained undisturbed for such a long time if they had been in the locker when Appellant commenced using the locker on 15 May, 1953; even though he did not clean the locker at that time.

The finding of marijuana in a shirt which was worn by Appellant presents strong corroborating evidence in support of Appellant's guilt. Although not owned by Appellant, the shirt had

been borrowed by him from his roommate and worn ashore by Appellant in foreign ports on more than one occasion. There is no evidence that Inouye ever wore the shirt. On the contrary, Inouye testified that he had never worn the shirt because it was too large for him; and this is confirmed by the testimony of the Customs Agent that he had been informed by Appellant that to the best of his knowledge Inouye had not worn the shirt.

Appellant's admission of the prior use of marijuana in 1942 or 1943 also lends support to the inference that he was guilty of wrongful possession of marijuana in the present case.

Hence, there was substantial evidence to make out a prima facie case against Appellant and he then failed to explain the possession of the marijuana to the satisfaction of the Examiner. Appellant repeatedly stated that he was innocent and that he did not know anything about marijuana. But the Examiner stated that he did not believe Appellant was telling the truth because he did not tell the truth with respect to his prior record and he could give no reasonable excuse for the presence of the marijuana in his locker or in the pockets of the shirt. Since this bare denial of knowledge presented a question of credibility to be determined by the Examiner as the trier of the facts who heard and observed the witnesses, his decision on this point will be upheld.

The record does not disclose that Appellant was denied a fair hearing or unjustly prejudiced by the failure to permit him more than one day to prepare his defense. The Examiner warned Appellant that his document would be revoked if he was found guilty. Nevertheless, Appellant stated that he did not need an attorney if he was to be given a fair and just hearing.

Appellant was entitled to "timely" notice of the date of the hearing. Whether a given period of time constitutes timely notice depends upon the circumstances, including the urgency of the situation and the complexity of the issues involved in the proceeding. With respect to the testimony of Inouye, the situation was urgent because the ship was scheduled to sail on the same afternoon as the date of hearing. In addition, the testimony of Inouye and Appellant is substantially in agreement. The time element is not important in connection with the testimony of the Customs employees since the material facts about the marijuana,

which were established by their mutually corroborative testimony, are not disputed by Appellant. Thus, since the basic facts are simple and uncontroverted, Appellant was not prejudiced by not having counsel to examine the opposition.

The only defense available to Appellant was to explain the possession to the satisfaction of the Examiner; and Appellant did not submit any affirmative evidence in this respect. If his failure to do so was the result of his inebriated condition at the hearing (which contention is not supported by the record), then any prejudice arose through his own conduct rather than because he was deprived of a fair hearing by the Examiner. In the absence of any additional evidence, the issue would still have been resolved into a question of credibility for the Examiner to determine - whether or not Appellant was represented by counsel. Since Appellant's credibility has been considered by the Examiner, it would serve no purpose to remand this case for additional proceedings at which Appellant would be represented by counsel. The order of revocation will be sustained.

ORDER

The Order of the Examiner dated at New Orleans, Louisiana, on 1 September, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 19th day of November, 1953

***** END OF DECISION NO. 713 *****

[Top](#)