

In the Matter of Merchant Mariner's Document No. Z-595729
Issued to: ARTURO SEMIDEY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

759

ARTURO SEMIDEY

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 9 June, 1954, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-595729 issued to Arturo Semidey upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a steward utilityman board the American SS QUISQUEYA under authority of the document above described, on or about 7 June, 1954, 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 two possible results of the hearing - revocation or dismissal. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily agreed to proceed without counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of three United States Customs employees.

In defense, Appellant offered in evidence his own sworn testimony. He stated that he had loaned the trousers in which the marijuana was found to a native in Puerto Barrios, Guatemala, while the latter was helping Appellant with his work on the ship for about three hours; Appellant saw the native smoking a marijuana cigarette on deck and told him not to do that on the ship; and the native put out the cigarette and placed it in a pocket of the trousers Appellant had loaned him. Appellant repeatedly testified that he could not produce any witness from the ship who had seen this native working for Appellant.

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 Do. Z-595729 and all other licenses, certificates 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 A. The Investigating Officer did not sustain the burden of proof as required by 46 C.F.R. 137.09-50(a). Appellant consistently denied conscious knowledge of the possession of marijuana. Even knowing possession of such a small quantity of marijuana is not "wrongful" because it could not be used or sold. The amount of marijuana under consideration is totally useless for any purpose whatsoever.

POINT B. The findings, decision and order of the Examiner are not supported by reliable, probative and substantial evidence as required by 46 C.F.R. 137.21-5.

POINT C. The findings, decision and order of the Examiner are contrary to the evidence and the law.

POINT D. The order of revocation is excessive in view of Appellant's good character and conduct, his honorable discharge from the United States Naval Service, his responsibility to support his family, and the circumstances surrounding the alleged offense. The order should be modified; or the decision should be reversed and the charge and specification dismissed.

APPEARANCES: Emanuel Friedman, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

On 7 June, 1954, Appellant was serving as a steward utilityman on board the American SS QUISQUEYA and acting under authority of his Merchant Mariner's Document No. Z-595729 while the ship was in the port of New Orleans, Louisiana.

On this date, a routine search of the ship was conducted by the U. S. Customs authorities. One of the Port Patrol Officers searched Appellant's quarters and his person. In a pocket of the khaki work trousers which Appellant was wearing at the time, the Port Patrol Officer found fragments of a substance which he suspected was marijuana. Consequently, separate sweepings were taken from all four pockets of this pair of trousers. Individual analysis disclosed that each of the four samples contained marijuana.

When questioned by a Customs Agent, Appellant claimed that he had no knowledge concerning the presence of the marijuana and that he never carried or used it. He also stated that a native who helped Appellant with his work in a foreign port must have put the marijuana in the trousers when Appellant had loaned them to the native.

OPINION

The only evidence presented in this case consists of fragments of marijuana gleaned from the pockets of the Appellant. While such

fragments were established to be marijuana by chemical analysis, the total quantity was so minute as not to present a hazard *per se*. In my opinion, such evidence, standing alone, and without other supporting facts or circumstances, is insufficient to sustain the charge in this case.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 9 June, 1954, is SET ASIDE, VACATED and REVERSED.

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

Dated at Washington, D. C., this 16 day of August, 1954.

***** END OF DECISION NO. 759 *****

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