

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-848298  
Issued to: EDWARD ELLEBY

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

795

EDWARD ELLEBY

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 28 October, 1954, Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-848298 issued to Edward Elleby upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an ordinary seaman on board the American SS SANTA PAULA under authority of the document above described, on or about 13 October, 1954, while said vessel was in the Port of New York, New York he wrongfully had 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 made his opening

statement and Appellant, with the assistance of the Examiner, stated, in effect, that Appellant was innocent of possessing narcotics.

The Investigating Officer then called Charles Bitetto, a Customs Officer, who identified the Appellant as the person he apprehended with 4 marijuana cigarettes in his possession, testified as to the details of the apprehension, and identified a record of a statement made by Appellant before Customs officials and a Customs Laboratory report indicating the cigarettes contained marijuana, which report was admitted in evidence. The Appellant cross-examined the witness concerning the apprehension and the conversation between Appellant and the witness at the time of apprehension.

The Investigating Officer then rested his case, and the Examiner further explained Appellant's rights to him. Appellant elected to make a statement under oath in which he stated he had lied to the Customs officials about buying and using marijuana in the belief that as a user he would be released, but that the truth was that someone else had put the cigarettes in his pocket without his knowledge. The Investigating Officer cross-examined Appellant, using the statement previously identified by Mr. Bitetto, as a basis for some of the questions. The Examiner also questioned Appellant.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and an unsworn statement and argument by Appellant and having 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 and entered the order revoking Appellant's Merchant Mariner's Document No. Z-848298 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 Coast Guard did not have jurisdiction because the alleged misconduct occurred after the Appellant had signed off the vessel from a foreign trip, had left the ship, and had gone ashore

beyond the pier.

POINT II. The Coast Guard failed to prove by required, admissible evidence the quantity and quality of alleged narcotic. A prerequisite in courts of record to make a prima facie case is that the Government produce a proper and reliable chemist report concerning the quantity and quality involved; and an admission made by the person charged, plus testimony of Customs agents is not sufficient to sustain a case. After filing his brief, counsel for Appellant received a copy of the transcript, and finding a chemist report in the record, raised a related point by letter that no objections were rightfully made on behalf of Appellant, who was not represented by counsel at the hearing, to the introduction of the report which was introduced as a duplicate original without being properly identified as such, and which was prejudicial, hearsay evidence.

POINT III. Appellant's statement to Customs officials was made a part of the official record after being identified but without being received in evidence; that this should not have been included in the record.

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

#### *FINDINGS OF FACT*

On 13 October, 1954, Appellant was in the service of the American SS SANTA PAULA as an ordinary seaman and acting under authority of his Merchant Mariner's Document No. Z-848298 while the ship was in the Port of New York, New York.

On 13 October, 1954, after leaving the ship and passing the uniformed Customs officers on the pier, the Appellant was apprehended by a Customs officer in plain clothes who found Appellant had four cigarettes in the right pocket of his trousers. When the apprehension occurred, Appellant was questioned briefly and he admitted the cigarettes were marijuana cigarettes.

When Appellant was questioned further by Customs officials on the following day, he stated under oath that he had purchased six marijuana cigarettes in Cartagena, Colombia, had smoked two of

them, and had placed the remaining four in his pocket and forgotten about them.

The Customs Laboratory analyzed the cigarettes, and reported they contained marijuana, and had a net weight of 51 grains when received.

There is no prior record of disciplinary action having been taken against Appellant's document.

#### OPINION

#### POINT I

The Coast Guard had jurisdiction in this case. Appellant was apprehended on 13 October, 1954 official notice is taken of the fact that the Shipping Articles state that Appellant was not signed off until 28 October, 1954. It has long been held that jurisdiction attaches even though the misconduct is committed ashore, provided there is a causal connection between the offense and his service with the ship. Jurisdiction is primarily based on the same reasoning applied by the Supreme Court in *Aguilar v. Standard Oil Co. of New Jersey* 318 U.S. 724, a case concerning maintenance and cure. In that case, Mr. Justice Rutledge said:

". . . shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion."

Ordinarily, proceedings under 46 U.S.C. 239 are based on a seaman being in the status of "acting under authority of his document" at the time of the alleged misconduct. The employment relationship and the status of being in the service of the ship are what the document authorizes. If a seaman has the status of being in the service of the ship, he is acting under authority of his document. The test is not the place where the misconduct occurred, but is the seaman's status or relationship to the service of the ship at the time the misconduct occurred. If he has the right to maintenance and cure while in such status, he is also subject to amenability to discipline.

#### POINT II

The evidence produced at the hearing was sufficient to prove the charge and specification. Contrary to counsel's assertion that a proper and reliable chemist report was not produced, the record shows that it was, as counsel undoubtedly observed when he received the transcript of the hearing. In my opinion the report was admissible as an original. While the term "duplicate original" has been applied to signed, so-called "carbon copies," such signed "copies" are just as much originals as the "copy" made by direct contact with the keys of a typewriter. It makes no difference which sheet happens to be uppermost in a typewriter as long as all are typed simultaneously and are completely executed without changes being made. *Wigmore on Evidence*, Third Edition, section 1234. At this hearing the chemist report was properly identified by a witness; although there was some confusion between the witness and the Investigating Officer as to whether it was an original or a "duplicate" original, it appears on its face to be an original. It was properly authenticated by the testimony of the witness. *Wigmore on Evidence*, Third Edition, section 2131. Further, since Appellant failed to object to the admission of the report, he waived the need of any evidence authenticating its genuineness. Since Appellant's rights, including the right to have counsel, were carefully explained to him before the hearing, it is too late at this stage to object. Without considering the report, it is my opinion that the admissions of Appellant at the hearing, the admission of Appellant before Customs officials (as testified to by Customs Officer Bitetto), Appellant's testimony that he knew marijuana when he saw it, and the other testimony of witness Bitetto were enough to make out a prima facie case for the Government, which case Appellant failed to rebut.

### POINT III

Appellant's sworn statement to Customs officials was identified and marked Exhibit "A," but it was never offered or received in evidence. The statement was used on cross-examination by the Investigating Officer in framing questions to bring out the credibility of Appellant as a witness. A copy was furnished counsel as demanded in his brief dated 18 November, 1954. It would probably have been better procedure for the Investigating Officer to have withdrawn the statement from the reporter after it had served its purpose, but since it was not received or used as

evidence by the Examiner and was only surplusage to the evidence considered by the Examiner, no prejudice to Appellant is found from its remaining in the file.

*CONCLUSION*

Offenses involving narcotics are consistently considered quite serious because of the vicious and irrational conduct which often results from the use of marijuana or other narcotics. Such use presents a grave threat to life and property on board ship.

For the above reasons, Appellant's contentions on appeal cannot prevail despite his prior good record and the personal hardship involved. Revocation is the only appropriate order in such cases.

*ORDER*

The order of the Examiner dated at New York, New York, on 28 October, 1954, is AFFIRMED.

A. C. Richmond  
Vice Admiral, U. S. Coast Guard  
Commandant

Dated at Washington, D. C., this 18th day of March, 1955.

\*\*\*\*\* END OF DECISION NO. 795 \*\*\*\*\*

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