

In the Matter of Merchant Mariner's Document No. Z-120140-D2
Issued to: LUIS SOUFFRONT

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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LUIS SOUFFRONT

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 5 December, 1951, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-120140-D2 issued to Luis Souffront upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as oiler on board the American SS COMAYAGUA under authority of the document above described, on or about 15 November, 1951, while said vessel was in the port of New Orleans, Louisiana, he wrongfully had in his possession certain narcotics; to wit, marijuana.

Since Appellant was not present at the commencement of the hearing on 19 November, 1951, the Examiner entered a plea of "not guilty" on behalf of Appellant and the hearing proceeded in absentia. The Investigating Officer made an opening statement before he introduced in evidence the testimony of four U. S. Customs employees.

When Appellant put in an appearance on 26 November, 1951, he 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. Appellant was represented by an attorney of his own choice. In defense, a character witness was produced and Appellant testified under oath in his own behalf. He denied any attempted bribery or knowledge concerning the marijuana found in his clothing and offered various explanations as to how it might have gotten there. Appellant stated that he had never used marijuana nor did he know what it looks like although he has been going to sea for 34 of his 49 years.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel 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-120140-D2 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 evidence is not sufficient to prove the specification and charge for the following reasons:

1. The Federal Bureau of Narcotics ruling is that a sample containing marijuana is reported to be entirely marijuana (Chemist McCombs' testimony at R.15).
2. The analyzed fragments were not segregated as to the particular piece of clothing in which each particle was found.
3. Therefore, a particle of marijuana on the towel or in the cigar box, when commingled with the lint and dust from Appellant's clothing before analysis of the sample, would have caused the entire sample to be analyzed as marijuana and create the erroneous impression that the clothing also contained marijuana.
4. The Customs Officers mentioned the presence of seeds but the laboratory report does not mention any seeds.
5. Appellant's explanations and excuses raised a doubt in the mind of the Examiner, Appellant denied the use or possession of marijuana, Appellant had no prior record, and his explanation that the marijuana particles might have been left in the cigar box by the previous occupant of Appellant's quarters is plausible.

APPEARANCES: O. Raymond Basile, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

On 15 November, 1951, Appellant was serving as oiler on board the American SS COMAYAGUA and acting under authority of his Merchant Mariner's Document No. Z-120140-D2 while the ship was in the port of New Orleans, Louisiana.

During a routine search of the ship on the morning of this date, Appellant unlocked his locker to permit Customs Inspector Lecroix and Port Patrol Officer Williams to inspect it. Officer Williams found two or three seeds, which resembled marijuana seeds, in a cigar box inside the locker. He also found one to three seeds and fragments in each of the following garments which were in the locker: a blue serge suit coat and trousers, a pair of dungaree trousers, and a dungaree shirt. There were loose fragments on Appellant's towel which was in the locker. Inspector Lecroix searched Appellant's person and located one seed in a pocket of the trousers he was wearing.

Appellant denied having knowledge that any of his clothes contained marijuana but admitted having had a marijuana cigarette in his possession in Panama or in a South American port for approximately half an hour before throwing it over the side because he was a drunkard but did not

use marijuana. Appellant then attempted to bribe both of the Customs Officers who had searched his belongings and found the substances which they suspected to be marijuana. Appellant stated that he had bought the suit at a pawn shop in Mobile; that the other clothing and the cigar box were in the quarters when he came on board more than a month earlier; and that the clothes had not been laundered since the latter time. Customs Inspector Delarosa entered Appellant's quarters before Appellant was taken to the Customhouse.

Some of the fragments and seeds were wrapped in brown paper and put in the cigar box which contained the balance of the seeds and fragments. The contents of the cigar box and brown paper were treated as separate samples when analyzed by chemists at the U. S. Customs Laboratory at New Orleans, Louisiana. Each sample was found to contain vegetable matter, dirt, lint, marijuana, and extraneous material. The total of the two samples was thirteen grains.

There is no record of any prior disciplinary action having been taken against Appellant.

OPINION

The facts that no determination was made as to precisely which, if any, articles of Appellants clothing contained traces of marijuana or as to the quantity of marijuana which was in the two samples analyzed are not significant for the purpose of this decision. The probability is that the vegetable matter referred to in the analysis report included marijuana seeds and that all of the seeds found in Appellant's clothing were similar. In that case, marijuana was found in four different pieces of clothing in Appellant's locker and in the trousers he was wearing when searched. The most favorable possibility to Appellant's cause (and the most extreme possibility under the facts as found) is that all of the marijuana came from the loose fragments on his towel. In any case, it was definitely established that some quantity of marijuana was found either in Appellant's locker to which he had the key or on his person, or both places. This is sufficient evidence upon which to find the specification and charge proved, and to abide by the Coast Guard policy of revocation in all cases where a seaman has been found guilty of any offense involving narcotics - regardless of the quantity. This is the well-established policy despite a seaman's lengthy service, prior unblemished record, and the presence of other circumstances which might dictate the wisdom of mitigating the order in some other types of cases.

The record does not support Appellant's contention that his explanations and excuses raised any serious doubt in the mind of the Examiner as to Appellant's guilt. It is obvious from the conclusion reached by the Examiner that he rejected Appellant's explanations as well as his denial of knowledge concerning the presence of the marijuana. Thereby, the Examiner rejected portions of Appellant's testimony as incredible. It logically follows from this that the testimony of Customs Inspector Delarosa and Port Patrol Officer Williams with respect to Appellant's attempt to bribe the Customs Officers and his having possessed a marijuana cigarette in Panama or South America was credible evidence. Even Appellant admitted at the hearing that he had been offered a marijuana cigarette when he was down South; but his claim that he does not know what marijuana looks like is inconsistent with this incident as well as with the fact that he has been going to sea for thirty-four

years. In view of the extreme seriousness of all narcotics offenses

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 5 December, 1951, is
AFFIRMED.

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

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