

In the Matter of Merchant Mariner's Document No. Z-203791
Issued to: PAUL ELLIS HOBBS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

670

PAUL ELLIS HOBBS

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 March, 1953, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-203791 issued to Paul Ellis Hobbs upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a waiter on board the USNS GENERAL LEROY ELTINGE under authority of the document above described, on or about 26 September, 1952, while said vessel was in the port of Bremerhaven, Germany, he wrongfully had in his possession a narcotic substance; to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled, the seriousness of the charge, and the possible results of the hearing. Although repeatedly advised of his right to be represented by counsel 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 stated that he did not know about the presence of the marijuana cigarettes which were found in his possession.

The Investigating Officer introduced in evidence a certified copy of the record of Appellant's trial and conviction at Bremerhaven, Germany, before the United States Court of the Allied High Commission for Germany, Area One, and a certified copy of the Commitment order of the United States Judge for Germany who presided at the trial of Appellant. The Investigating Officer then rested his case.

In defense, Appellant elected to testify under oath in his own behalf. Appellant stated that he had never used or purchased marijuana, and that he had no knowledge of the three "sticks" of marijuana which were found on his person and in his locker.

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-203791 and all other licenses and documents issued to this Appellant.

From that order, this appeal has been taken, and it is again urged that Appellant is not guilty of the charge. Appellant requests that his document be returned to him so that he can support his family. Appellant also states that he has not had a mark against his record during thirteen years in the Merchant Marine service.

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

FINDINGS OF FACT

On 26 September, 1952, Appellant was serving as a waiter on board the USNS GENERAL LEROY ELTINGE and acting under authority of his Merchant Mariner's Document No. Z-203791 while the ship was docked at Bremerhaven, Germany.

When Appellant left the ship on this date, he executed a customs declaration which included the statement that he had no marijuana in his possession. Appellant was then searched and one marijuana cigarette was found in a pocket of the coat which he was wearing. A search of Appellant's locker in his quarters aboard the ship disclosed the presence of two marijuana cigarettes in a pair of trousers belonging to Appellant.

On 15 October, 1952, Appellant was arraigned before the United States Court of the Allied High Commission for Germany, Area One, at Bremerhaven, Germany, on the two charges of importing narcotics into Germany on 26 September, 1952, and making a false customs declaration on 26 September, 1952. Both on 15 October and at the trial which was held on 29 October, 1952, Appellant was represented by counsel appointed by the Court. Appellant was convicted of both charges which were supported by substantially the same findings as are set forth in the preceding paragraph; and he was sentenced to imprisonment for one month on each charge.

OPINION

The judgment of conviction made out a prima facie case against Appellant's document in these proceedings because his conviction before the United States Court of the Allied High Commission for Germany was based upon the same facts as the order of the Coast Guard Examiner. The best evidence of the facts alleged in the specification is the original of the Commitment order; and a certified copy of the latter was received in evidence by the Examiner.

The Examiner considered the testimony of Appellant but rejected his denial that he had knowledge of the presence of the three marijuana cigarettes. As stated in the opinion of the Examiner, one convincing reason for discrediting Appellant's claim of lack of knowledge is the fact that two additional marijuana cigarettes were found in Appellant's locker after the first marijuana

cigarette had been discovered on his person. In addition, the Examiner, as the trier of the facts who heard and observed Appellant while he was testifying, was the best judge as to the veracity of Appellant's testimony; and the Examiner's determination on this point should not be disregarded unless he revealed of record that he used an irrational test of credibility. There is no such illogical approach contained in the decision of the Examiner before whom Appellant testified.

Therefore, the prima facie case was not overcome by Appellant's denial of knowledge. The prima facie case arises from the rebuttable presumption of fact that Appellant knew the marijuana was in his possession. This presumption is based upon the definitely proven and admitted fact that Appellant had marijuana in his physical possession. In other words, the most probable result and logical inference to be drawn from the circumstantial evidence (proof of actual physical possession), in the absence of a satisfactory explanation, is that Appellant knew the marijuana was on his person and in his belongings.

Because of the inherent danger to life and property where narcotics are on board ships, the "knowing possession" of narcotics is considered to be "wrongful possession" unless satisfactorily explained. Otherwise, the Coast Guard would not be able to perform its statutory duty, under 46 U.S.C. 239, to protect lives and property at sea by means of these administrative proceedings. This presumption is based on the ordinary rules of evidence and does not necessitate the employment of any statutory presumption. Presumptions of fact are judicially sanctioned inferences which are set up as standards by the courts in order to permit certain deductions since past experience has shown that the result presumed is the usual and probable consequence of certain facts and circumstances.

Hence, possession of narcotics with "knowledge of possession" requires the utilization of the policy of the Commandant to revoke the documents of a seaman who has been found guilty of any narcotics offense. Despite Appellant's prior clear record and the hardship resulting from this action, the order of the Examiner must be sustained in conformance with this policy.

ORDER

The Order of the Examiner dated at New York, New York, on 9 March, 1953, ~~IS~~ **AFFIRMED**.

Merlin O'Neill
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 10th day of July, 1953.