

In the Matter of Merchant Mariner's Document No. Z-301114-D1 and
all other Licenses and Documents

Issued to: STUART EARL GRAY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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STUART EARL GRAY

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.

By order dated 29 July 1955, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-301114-D1 issued to Stuart Earl Gray upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as chief refrigeration engineer on board the American SS PRESIDENT TAFT under authority of the document above described, on or about 23 September 1953, while said vessel was in the port of Stockton, California, he wrongfully had in his possession and also on board ship, a usable quantity of marijuana (First Specification); on a voyage ending on 8 September 1953, he wrongfully took a usable quantity of marijuana on board his vessel while in the Philippine Islands (Second Specification).

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. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement. The Investigating Officer introduced in evidence the testimony of the two U. S. Customs Officer who apprehended Appellant on 23 September 1953, the testimony of two State narcotics employees, and numerous documentary exhibits including a record of Appellant's State court conviction for possession of marijuana on 23 September 1953. The Investigating Officer then rested his case.

After counsel made his opening statement, Appellant offered in evidence his sworn testimony. He stated that at Cebu, Philippine Islands, he gave his sunglasses to shipmate Romero to trade with a cab driver for loose marijuana; Appellant knew where Romero hid the marijuana on the ship; and Appellant had borrowed the shirt in

which the U. S. Customs Officers at Stockton found marijuana cigarettes.

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 decision and concluded that the charge and two specifications had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-301114-D1 and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

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

FINDINGS OF FACT

Between 6 July 1953 and 23 September 1953, Appellant was serving as chief refrigeration engineer on board the American SS PRESIDENT TAFT and acting under authority of his Merchant Mariner's Document No. Z-301114-D1.

While the ship was at Cebu, Philippine Islands on 11 August 1953, Appellant handed his sunglasses to a shipmate named Romero in order to permit him to trade the glasses for a package of bulk marijuana on board the ship. Romero did not have any money at the time of the transaction. He did not later monetarily reimburse Appellant. On the return voyage to the United States, Romero told Appellant that the marijuana was hidden in the spare parts box in the refrigeration engineers storeroom. Appellant had a key to this storeroom. The foreign voyage was completed on 8 September 1953 and Appellant signed on for a coastwise voyage commencing on the following day.

On 23 September 1953, the PRESIDENT TAFT was docked at Stockton, California. Upon leaving the ship, Appellant was searched by two U. S. Customs Port Patrol Officers. They found eight marijuana cigarettes in a pocket of the sport shirt which Appellant was wearing. While the two Customs Officers were searching for further evidence of marijuana on the ship, Appellant told them about the marijuana in the spare parts box where they then located 24 marijuana cigarettes in addition to a quantity of bulk marijuana. Appellant was arrested and turned over to the State of California police authorities.

Subsequently, Appellant was charged before the Superior Court of the State of California, in and for the County of San Joaquin, with the unlawful possession of marijuana on 23 September 1953. On 27 October 1953, Appellant, with counsel, entered a plea of guilty

to the charge. The imposition of sentence was suspended for two years and Appellant was placed on probation for this period of time.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiners decision is unlawful, arbitrary and capricious, and as such it is in violation of the constitutional guarantee of due process of law as set forth in the Fifth Amendment to the Constitution.

APPEARANCES: Edward L. Cragen, Esquire, of San Francisco, California, of Counsel.

OPINION

There is nothing in the record to support Appellant's blanket contention that the Examiner's decision is arbitrary or, as a result, that Appellant has been denied due process of law. As indicated primarily by Appellant's court conviction and his testimony at the hearing, the findings above (which are substantially the same as those made by the Examiner) are based upon substantial evidence. The record clearly shows that Appellant was afforded a fair hearing in every respect.

The examiner accepted the testimony of the two Customs Officers who stated that Appellant admitted ownership of the marijuana in the shirt pocket and in the spare parts box. The Examiner rejected Appellant's denial that he made these admissions and rejected his related denials such as his testimony that the shirt did not belong to him.

As to the Second Specification, Appellant was constructively in possession and control of the marijuana when Romero took it on board the ship since Appellant collaborated in the purchase of the marijuana by contributing his sunglasses for which he received no monetary compensation. Appellant knew the location of the marijuana on board the ship. The only logical conclusion is that he was a joint owner with Romero and, therefore, jointly responsible for taking the marijuana on board the ship at Cebu.

Concerning the First Specification, Appellant failed to rebut the presumption of wrongful possession arising from proof of actual physical possession of eight marijuana cigarettes on 23 September 1953. His denial of guilt at the time of the hearing was inconsistent with his prior plea of guilty before the California State court and his admissions to the Customs Officers at the time of his arrest. It is immaterial whether these eight cigarettes were

made from the marijuana obtained at Cebu.

It is my conclusion that both specifications have been proved by substantial evidence. Proof of either specification would be sufficient to require the order of revocation. See 4,6 CFR 137.03-1.

ORDER

The Order of the Examiner dated at San Francisco, California, on 29 July 1955 is AFFIRMED.

A. C. Richmond
vice Admiral, United States Coast guard
Commandant

Dated at Washington, D. C., this 17th day of May, 1956.