

In the Matter of Merchant Mariner's Document No. Z-688268-D1 and
all other Licenses, Certificates and Documents

Issued to: RAUL FELICIANO MALDONADO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

937

RAUL FELICIANO MALDONADO

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 18 June 1956, an Examiner of the United States Coast Guard at New York, New York revoked Merchant Mariner's Document No. Z-688268-D1 issued to Raul Feliciano Maldonado upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a wiper on board the American SS EXCELLER under authority of the document above described, on or about 12 August 1955, while said vessel was in the Port of 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 two possible results of the hearing, revocation, or dismissal of the charge and specification. Appellant was represented by counsel of his own choice. After argument by both parties, the Examiner denied counsel's motion to dismiss on the ground that a prior dismissal in a hearing conducted under 46 U.S.C. 239a-b (Public Law 500, 83d Congress, 68 Stat. 484) was res judicata of the issues herein. Upon arraignment. Appellant entered a plea of "not guilty" to the charge and specification proffered against him.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of three Customs employees and three documentary exhibits.

In defense, Appellant offered in evidence his sworn testimony. He stated that he had purchased a pair of earrings and a necklace for his wife at Casablanca, he forgot to replace one earring after unwrapping the package to look at the earrings and necklace, he threw the package containing one earring and the necklace out of the porthole because he had not declared these purchases before arrival and did not want to lose his job as a result of this. Appellant denied ever having used marijuana.

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 specification had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-688268-D1 and all other licenses, certificates 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

On 12 August 1955, Appellant was serving as a wiper on board the American SS EXCELLER and acting under authority of his Merchant Mariner's Document No. Z-688268-D1 while the ship was docked at a pier in Brooklyn, New York after arrival on the morning of this date.

At approximately 0900, Appellant was working in the ship's machine shop when he was approached by Port Patrol Officers Stein and Benson. When Officer Stein asked Appellant if he had anything on his person to declare, Appellant requested that they go to his room. As soon as the three men entered the room Appellant ran toward the open porthole, pulled a small package wrapped in paper from his left hip pocket and threw it through the porthole. Officer Stein immediately ran to the porthole and saw a package bounce and land on a camel-type fender which was next to the ship and about 10 feet below the porthole. Officer Stein kept the package under observation until it was recovered by Officer Benson.

The package (about 4 inches by 2 inches by 1 inch) was opened and found to contain two smaller packages, each of which contained seventeen hand made cigarettes. (Later analysis showed that these cigarettes had a total of 246 grains of marijuana in them.) Appellant denied this was his package or that it was the one he had thrown through the porthole. Appellant stated that the package he had thrown out contained an earring and he produced what he said was the matching earring. A search of the room disclosed no further evidence of marijuana or other narcotics.

Appellant has no prior record.

BASIS OF APPEAL

In this appeal, it is urged that the Investigating Officer did not sustain the burden of proving the specification by reliable

probative and substantial evidence. The Examiner's conclusion that the package recovered from the fender was the same package thrown by Appellant is contrary to the evidence; Officer Stein could not have seen, at all times the package thrown by Appellant when Officer Stein was seven feet from the porthole. Officer Benson admitted that he did not know that the package he found on the fender was the one thrown by Appellant; and Appellant denied that he had thrown the package which was recovered from the fender.

For these reasons, it is especially submitted that the decision of the Examiner should be reversed.

Appearance: Emanuel Friedman of New York City by Thomas J. Portela , of Counsel

OPINION

The Examiner stated that he was satisfied from the testimony of the two Port Patrol Officers that the package which Appellant threw out the porthole was the same package recovered from the fender by Officer Benson and found to contain 34 marijuana cigarettes. The Examiner further specifically stated that he rejected the testimony of Appellant that he threw away an earring (as Appellant told the two officers at the time) or an earring and a necklace (as Appellant testified at the hearing) because he had not declared such article or articles. Not only were Appellant's two stories inconsistent as to the alleged contents of the package he threw away, but it would be unreasonable to believe that the two matching earrings were kept in different places.

Regardless of the specific rejection of Appellant's explanation, the only logical inference is that the package thrown away by Appellant was recovered by Officer Benson. It would be extremely coincidental if another package of the same general description had been observed within a matter of seconds by Officer Stein in the approximate position where a different package belonging to Appellant should have landed. Rejecting such remote speculation there is no reason why the logical conclusion of the examiner should not be accepted. Hence, it is my opinion that the allegation of wrongful possession of marijuana is supported by reliable, probative and substantial evidence.

An order of revocation is mandatory where a seaman has been found guilty of possession of narcotics. 46 CFR 137.11-1.

ORDER

The order of the Examiner dated at New York, New York on 18 June 1956 is AFFIRMED.

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

Dated at Washington, D.C., this 27th day of November, 1956.