

In the Matter of Merchant Mariner's Document No. Z-150345-D2 and
all other Seaman Documents

Issued to: SEABRON H. WRIGHT

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1350

SEABRON H. WRIGHT

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 13 February 1962, an Examiner of the United States Coast Guard at Savannah, Georgia, revoked Appellant's seaman documents upon finding him guilty of misconduct. The specifications found proved allege that Appellant, on 18 February 1960, while serving as galley man aboard the U. S. Merchant Vessel, SS JOSHUA TREE, under authority of Merchant Mariner's Document No. Z-150345-D2, did wrongfully have in his possession certain narcotics, to wit: hashish, the resin of marijuana; and that while serving as Chief Cook on board a Merchant Vessel of the United States, the SS TEXACO MONTANA, under authority of the above described Merchant Mariner's document, Appellant did on 9 March 1961 commit assault with a dangerous weapon, to wit: a knife, on a member of the crew, one Jack M. Hopkins, the Chief Steward.

At the hearing on 2 February 1962, 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, not represented by counsel, entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced into evidence a stipulation with the Appellant that Appellant was a member of the crew of each of the vessels involved on the dates upon which the offenses were alleged to have occurred. To sustain two specifications, the Investigating Officer offered, and there were received into evidence with the consent of the Appellant, various documents including sworn statements.

In defense, Appellant offered in evidence his own testimony. He denied ownership of the marijuana and asserted that he had no knowledge of being in possession of it. He also denied guilt under the second specification by contending that he was acting in self-defense when the alleged assault on the Chief Steward took

place.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specifications had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On 18 February 1960, Appellant was serving as galley man aboard the U. S. Merchant Vessel, the SS JOSHUA TREE, under the authority of his Merchant Mariner's Document No. Z-150345-D2. On 9 March 1961, Appellant was serving as Chief Cook, under the authority of the above described document, aboard the U. S. Merchant Vessel, the SS TEXACO MONTANA.

On 18 February 1960, the SS JOSHUA TREE was in the port of Mobile, Alabama, for the purpose of paying off her crew. Shortly before the pay-off Appellant left the ship with his personal effects. He was intercepted by a U. S. Customs Officer. As a result of a search of Appellant's personal effects by the Officer, a small quantity of hashish (approximately 10 grains) was found concealed in the base of a flashlight in Appellant's luggage. Appellant admitted to the Officer that the flashlight was his property, but disclaimed any knowledge of the presence of the hashish in the flashlight. The U. S. Attorney's Office did not prosecute Appellant because of the small quantity of hashish involved.

On 9 March 1961, the SS TEXACO MONTANA, enroute to sea from Port Arthur, Texas was proceeding through the Sabine Channel. At approximately 1645 the Chief Steward entered the galley, and being dissatisfied with the manner in which Appellant was preparing the evening meal, ordered him to leave the galley. Appellant left the galley, but returned shortly thereafter and stabbed the Chief Steward in the back of the neck several times with a pocketknife. Both men were removed from the ship. The Chief Steward was taken to the hospital, and Appellant was taken into custody by the local police authorities. On the following day, upon charges brought against Appellant by the Chief Steward, in the Justice Court, Precinct 2, Jefferson County, Texas, Appellant pleaded guilty to the charge of assault and was fined \$25.00 and costs.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiner's finding that he was in wrongful possession of narcotics should be overturned on the grounds that Appellant "had absolutely no knowledge of any hashish

being in my flashlight", that the said hashish was "planted there and the Customs Officers tipped off who to search and where to look", and that two years had lapsed before he was charged by the Coast Guard. Appellant further contends that the stabbing of the Chief Steward was in self-defense.

Appellant prays that the order of the Examiner be reversed and his documents be re-installed.

OPINION

The first ground of appeal is dismissed for the following reasons. The government made out a prima facie case of wrongful possession of narcotics by showing that Appellant had physical possession of the hashish. Since a presumption of "conscious" and "knowing" possession immediately arises from the proof of physical possession, the burden was on the Appellant to rebut this presumption by convincing the Examiner that he did not have any knowledge of the actual physical possession of the substance. See Commandant's Appeal Decision No. 1195. Appellant failed in this burden because the Examiner rejected his explanation as to the manner in which the hashish found its way into the flashlight. The Commandant is bound by this determination. See Commandant's Appeal Decisions Nos. 712, 810, 1081, 1195.

Appellant next contends that he acted in self-defense when he stabbed the Chief Steward.

The statement of the Chief Steward, which was introduced into evidence with the permission of Appellant, indicates that Appellant attacked the Chief Steward from the rear, apparently without provocation. Appellant, on the other hand, gives a totally different version of the incident pointing out the Chief Steward as the aggressor with a cleaver. The Examiner, who is in a position to observe the demeanor and judge the credibility of a witness, did not accept Appellant's statements. Since the Examiner, as trier of facts, is justified in making this determination, the Commandant will not disturb it.

The third contention made by Appellant is that two years lapsed before he was charged by the Coast Guard. Although no reason appears from the record for the delay, there is no indication in the record that Appellant was prejudiced by the delay. In view of this the two year lapse is not unreasonable under the circumstances.

The conclusion that the charges and specifications were proved is hereby affirmed.

ORDER

The order of the Examiner dated at Savannah, Georgia, on 13 February 1962, is AFFIRMED.

E. J. ROLAND
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 22nd day of October 1962.