

IN THE MATTER OF MERCHANT MARINER'S DOCUMENTS NO. Z-1088003 AND ALL
OTHER SEAMEN DOCUMENTS

Issued to: Holly Ramos

Modified ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1598

Holly Ramos

This matter has been submitted for reconsideration of the two months outright suspension plus two months on twelve months probation adopted by my order of 20 January 1967 as a result of my affirmation of the Examiner's findings that the Appellant wrongfully had in his possession a switchblade knife and wrongfully attempted to smuggle liquor into the United States while serving as chief reefer engineer on the United States SS SANTA PAULA on 25 March 1966.

Appellant's counsel requests a modification of the order based on the Appellant's long record of service, past good conduct and the fact that he has already suffered considerable financial hardship resulting from the above incident. Upon reconsideration it has been determined that these factors should be given more significance. Accordingly, the order has been modified.

ORDER

My order of 20 January 1967, is modified to provide that Merchant Mariner's Document No. Z-10088003 issued to Holly Ramos shall be suspended outright for one (1) month plus two (2) months on twelve months probation.

As MODIFIED, the order is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 21st day of March 1967.

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1088003 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Holly Ramos

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

Holly Ramos

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 14 June 1966, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months outright plus two months on twelve months' probation upon finding him guilty of misconduct. The two specifications found proved allege that while serving as chief reefer engineer on board the United States SS SANTA PAULA under authority of the document above described, on or about 25 March 1966, Appellant wrongfully had in his possession a switchblade knife; and wrongfully attempted to smuggle nine imperial quarts of liquor into the United States.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and each specification but after each plea requested a chance to explain the circumstances.

The Examiner listened to each explanation and ruled that they were not inconsistent with the plea of guilty. No evidence was submitted.

FINDINGS OF FACT

On 25 March 1966, Appellant was serving as chief reefer engineer on board the United States SS SANTA PAULA and acting under authority of his document while the ship was in the port of New York, New York. He wanted to bring nine imperial quarts and one gallon of alcoholic beverages through Customs. He started with five of the imperial quarts. When he reached the Customs office, he found that there was no officer on duty. He proceeded to the gate where a guard was on duty and learned that there was no Customs inspector on station. The Appellant put the five bottles in his car. He went back to the ship for the remaining four quarts and put these in his car. On a third trip, the Appellant fetched the last bottle and when he reached the gate, he entered into a conversation with the guard. At that time, the inspector returned and caught the Appellant with the bottle in his hand. The Appellant's car was searched and the nine imperial quarts were found.

Subsequently, the Appellant's locker was searched and a switchblade knife was found. The Appellant explained that he found the knife in a car he was using in Aruba. The car had a flat tire and Appellant used the knife to remove the hubcap; he then put the knife in his pocket and forgot about it after leaving it in his locker in order to return it to its owner.

Appellant's prior record is as follows: Warned on 4 February 1965, New York, for possession of liquor aboard the United States SS SANTA PAULA.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the record does not support the findings of fact. This is based on the following:

(1) The evidence in the record concerning the first specification does not indicate that the repair tool found in the Appellant's locker was anything more than a rusty knife. In addition, the rusty knife was obtained by an illegal search and seizure and the evidence supporting such charges is inadmissible. The Appellant was prevented from producing the instrument since it was retained in the Government's possession.

(2) The findings which support the second specification are not sustained by the evidence which indicates that the imperial quarts of liquor were not smuggled ashore. This is based on the applicable Bureau of Customs provisions concerning the illegal landing of goods having a value of less than \$300 for which civil penalties are assessed in contrast to the smuggling of goods for which criminal sanctions are imposed. In the present case, only civil penalties were imposed.

APPEARANCE on appeal: Simon V. Haberman, Esq., of New York, New York.

OPINION

Counsel's contentions will be dealt with in the same order as presented above.

At the hearing, the Appellant waived his right to counsel with full knowledge of this right under the law. (R.2) The first specification was as follows: "In that you, while serving as chief reefer engineer on board a merchant vessel of the United States, the SS SANTA PAULA, under the authority of your duly issued Merchant Mariner's Document, did, on or about 25 March 1966, while said vessel was at New York, wrongfully have in your possession a switchblade knife." To this specification, the Appellant pled, ". . . I'm guilty with an explanation." (R.4)

This explanation concluded with the statement, ". . . I'm guilty of that possession." (R.5) Nowhere did the accused protest the language of the specification nor that the implement was not a switchblade knife although the Examiner repeatedly referred to it as a "switchblade knife." (R.8) The explanation merely recited that he did not own the knife nor was it on his person at the time of recovery. Under these circumstances, with the Appellant admitting the possession of a switchblade knife, there was no controversy as to what type of knife it was and no need to introduce the implement into evidence. The Examiner very carefully listened to the Appellant's explanation and ruled that it was not inconsistent with the guilty plea. On review, there can be found no error in this ruling.

It has also been urged that the evidence as to the switchblade knife is inadmissible since it was obtained by an illegal search and seizure. This is without merit. The usual requirements of probable cause and a search warrant do not apply to searches of vessels by Customs officers. Section 1581(a)

of Title 19, U. S. Code, specifically authorized such officers to". . . at any time go on board any vessel or vehicle at any place in the United States. . . and search the vessel or vehicle and every part thereof and any person, trunk, package or cargo on board. . . ." In that respect see Commandant's Appeal Decision No. 1536. Furthermore, since the present action is a remedial, administrative proceeding and not penal, evidence obtained by an unreasonable search and seizure is admissible. (Commandant's Appeal Decision No. 1569).

Pertaining to the final contention on appeal, the word "smuggle" is a technical word having an accepted meaning. ". . . It conveys the idea of a secret introduction of goods with the intent to avoid payment of duty, and signifies clandestinely to introduce, or to bring on shore, or carry from the shore, goods, wares, or merchandise, for which the duty has not been paid, or goods the importation of exportation whereof is prohibited." 25 C.J.S. 544, section 248. See also Keck v. U. S., 172 U.S. 434, 446 (1899). It is obvious from the admissions of the Appellant during the hearing that it was his intention to put his bottles of liquor in his car and not pay the duty on them. In short, his clandestine activity was smuggling according to the classic definition. It matters not, as far as this remedial proceeding is concerned, that the Bureau of Customs regulation chooses to make a distinction between items costing \$300 or less and those costing more than \$300.

ORDER

The order of the Examiner dated at New York, New York, on 14 June 1966, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 20th day of January, 1967.

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