

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs
MERCHANT MARINER'S DOCUMENT NO. Z 217 56 7381
Issued to: Joel Marc CORDISH

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2098

Joel Marc CORDISH

This appeal has been taken in accordance with Title 46 United Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 5 May 1976, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents for 6 months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Engineer Cadet on board the United States SS CHRISTOPHER LYKES under authority of the document above captioned, on or about 11 February 1976, Appellant wrongfully refused to obey a lawful command of the ship's master.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence two exhibits and the testimony of two witnesses.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Judge reserved decision. He subsequently served a written order suspending all documents, issued to Appellant, for a period of 6 months on 12 months' probation.

The entire decision and order was served on 10 May 1976. Appeal was timely filed on 2 June 1976.

FINDINGS OF FACT

On 11 February 1976, Appellant was serving as an Engineer Cadet on board the United States SS CHRISTOPHER LYKES and acting under authority of his document while the ship was at sea, the vessel having just departed from Port Elizabeth, South Africa. On that day the ship's master conducted a search of the open areas and some of the crewmen's quarters for illicit contraband and narcotics. The master stated in the hearing that the search had

been initiated because another cadet had been apprehended the day before by port authorities for possession of marijuana. The master testified that the cadet admitted that he had at one time brought the marijuana with which he had been apprehended aboard the vessel.

In addition, the master related that he had been informed by a passenger on the vessel that at least three crewmen had been observed smoking marijuana and that four to six pounds of marijuana were found in the steering gear room and the upper engine room of the ship during the course of the voyage. Finally, the master said that it was company policy and required by most port authorities that a search be conducted for contraband prior to arriving at a port.

The master, accompanied by the chief mate, knocked and entered the Appellant's quarters stating that they wished to conduct a search. At that point the Appellant stood up from the desk at which he had been sitting and put a small package which had been on the desk into the right pocket of his jeans. The master asked the Appellant whether he had any marijuana in his quarters and he replied hesitantly that he did not. The master then proceeded to search the Appellant's quarters and found no contraband. At the conclusion of the search the chief mate mentioned to the master that the Appellant had a noticeable bulge in the right pocket of his jeans. The master thereupon commanded the Appellant to empty the contents of his pockets onto the desk. The Appellant responded by asking the master, "Are we under American jurisdiction", to which the master stated, "Yes, this is an American ship". The Appellant then replied, "Well, I respectfully refuse that command". The master then left the Appellant with the chief mate to get the first engineer. The master returned with the chief engineer and in his presence again commanded the Appellant to empty the contents of his pockets. The Appellant answered, "I decline to respond to the command". At no time did the master touch the Appellant or have him physically searched in any way.

The master informed the Appellant that he was going to log him for his refusal to obey the command and went to his quarters with the chief mate to make the entry. The master then instructed the chief mate to bring the Appellant and the first engineer to his quarters for the logging. The master logged the Appellant and asked him upon observing that the bulge was no longer in his right pocket whether he had emptied his pocket. The Appellant stated that he had removed a knife from the pocket and later said at the hearing that he had been reluctant to remove it when the master commanded as he was not sure whether it was legal to carry a knife aboard ship. After the logging had taken place the master confined the Appellant in the ship's hospital. The following morning the vessel docked in the port of East London, South Africa where the

Appellant was searched by customs officials. No contraband was found upon the Appellant. In addition, Appellant testified at the hearing that he did not have nor smoke marijuana aboard the vessel at any time.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) The order of the master was not lawful and therefore not one which the Appellant was required to obey.
- (2) The master exceeded his authority by conducting the search.
- (3) The master's authority to perform searches is limited.
- (4) The master's search and order to the Appellant violated the Appellant's Fourth Amendment rights against unreasonable search and seizures.
- (5) The Appellant's refusal to obey the master's order was mistakenly motivated.

APPEARANCE: George S. Meyer of Kierr, Gainsburg, Benjamin, Fallon and Lewis, New Orleans, Louisiana.

OPINION

I.

Appellant contends that the lawfulness of the master's order cannot be justified on the basis of the master's fear of receiving a penalty if contraband was found upon the vessel by port authorities. The Appellant focuses particular attention upon the Administrative Law Judge's citation of 19 U.S.C. 1584, entitled "Falsity or lack of manifest; penalties". Appellant states that this reference to United States law and the sanctions provided under it cannot justify the master's order as section 1584 expressly applies only to vessels bound for a United States port. This argument is without merit. The Judge was not attempting to base the legality of the master's order upon section 1584 but only illustrating the seriousness with which the duty to search for contraband is viewed. The Supreme Court explained in *The China*, 74 U.S. (7 Wall) 53, 19 L.Ed. 67 (1869) that:

The maritime law as to the position and powers of the master, and the responsibility of the vessel, is not derived from the civil law of master and servant, nor from the common law. It had its source in the commercial usages and jurisprudence of the middle ages.

The basis for the master's authority to order the Appellant to empty his pockets rests upon the general maritime law which has long recognized the master's responsibility for the safety of the ship. This responsibility was confirmed in the case of The Styria, 186 U.S. 1, 22 S.Ct. 731 (1901) where the court said:

The master of a ship is the person who is entrusted with the care and management of it, and the great trust reposed in him by the owners, and the great authority which the law has vested in him, require on his part and for his own sake, no less than for the interest of his employers, the utmost fidelity and attention.

As demonstrated by the courts, the master is regarded as the individual primarily charged with the care and safety of the vessel and crew. The presence of drugs aboard a vessel is a direct threat to the master's ability to carry out this duty, a threat whose seriousness is illustrated by the severe sanctions provided in 46 U.S.C. 239b for violation of the drug laws of the United States by a seaman. I therefore conclude that the order to the Appellant commanding him to empty his pockets during the course of a search for drugs is within the powers given to the master by maritime law. The existence of domestic and foreign laws which penalize a master for failing to diligently search for contraband aboard his vessel does not, as Appellant contends, provide the source of his authority to conduct a search but rather the "inspiration" to do so.

II

The Appellant argues that the master exceeded his authority by not waiting until the vessel had arrived in the port of East London, South Africa, a voyage of only six or seven hours from the last port of departure, and permitting the "constituted authority" to investigate for contraband. While the master did have the option to put Appellant in isolation and wait for the port authorities to conduct a search, the master was in no way under any compulsion to do so. The safety of the vessel and crew is not a responsibility which the master may defer or delegate to other parties. The safety of the vessel is an immediate concern of the master and is not dependent upon the length of the voyage. Appellant also asserts that, "A seaman is not bound to obey an unlawful and unreasonable order of the Master when it concerns his

body and person and should not be penalized for refusing to obey the order". This argument is patently defective. To state that a master is unable to search a crewman who may be possessing drugs far more dangerous than marijuana or even a weapon would render him impotent aboard his own vessel.

Finally, I note that the master provided a reasonable explanation for his unwillingness to wait for the port authorities to conduct a search in that:

Its quite useless to search a vessel when half of the crew is ashore unless you are going to be able to completely encase the crew. (TR 15)

I conclude that the master did not exceed his authority by conducting the search himself instead of waiting for the port authorities to do so.

III.

The Appellant maintains that the master's authority to conduct a search is limited. Appellant contends that:

In most instances, and in numerous federal cases, the obedience to a master's order is based upon the necessity for prompt action for the safety of the vessel under the circumstances.

Appellant argues that there was no emergency at the time of the search which could justify the master's order. However, as stated above, the authority of the master to investigate is not limited to situations where the vessel is in immediate danger but is derived from his duty to keep the vessel and crew out of danger in the first place. In Commandant's Appeal Decision No. 1282, it was held that a chief mate had the right to search the package of a crewman as:

The need to inspect packages of crewmembers is directly related to the operation and safety of ships because forbidden items such as liquor, knives and narcotics in the possession of crews could interfere seriously with the maintenance of discipline and the successful completion of voyages.

Finally, Appellant repeatedly questions the master's right to conduct a body search. The issue is not relevant to the present case as the master did not touch or physically search the Appellant at all.

IV.

The Appellant argues that the master's search of his quarters and person was unreasonable and in violation of the Fourth Amendment. Reasonableness is always an element subject to the circumstances existing at the time of the act. The circumstances which led the master to initiate an investigation included the arrest of a crewman for possession of marijuana by the authorities of the port from which the vessel had just left, the report of a passenger that other crewmen had been observed smoking marijuana and the discovery of four to six pounds of marijuana during the course of the voyage. Furthermore, the master was reasonably put on suspicion by Appellant's somewhat furtive movement when the master and the chief mate had entered his quarters. It is not necessary, as Appellant states, that the master search each and every member of the crew and every quarter in order to establish the reasonableness of the search.

The Constitutional issue discussed in U.S. v. Watson 391 F.2d 927 (C.A.La. 1968) was not whether there was sufficient probable cause for the master to conduct a warrantless search but whether he could be construed to be an officer of the government and therefore subject to the mandates of the Fourth Amendment at all. The court declared at page 928 that the master conducted the search in the capacity of a private citizen and that:

We have held in Barnes v. United States, 1967, 373 F. 2d. 517, and we reaffirm our prior holding, that the Fourth Amendment does not require exclusion of incriminating evidence obtained through a search by a private citizen.

On the basis of the holding in Watson (see also U.S. v. Dorsey, 449 F.2d 1104 (D.C.D.C. 1971); U.S. v. Knox, 458 F.2d. 612 (5th Cir. 1972)), the argument that the master violated Fourth Amendment rights is without foundation.

V.

Appellant finally argues that his refusal to obey the lawful order of the master was mistakenly motivated in that he thought that the pocket knife which he allegedly had in his pocket was against regulations. He therefore maintains that he believed the order to produce the knife was unlawful as it violated his Fifth Amendment rights against self-incrimination. 46 U.S.C. 710 prohibits the wearing of sheath knives upon vessels of the United States. A pocket knife would therefore arguably not be in violation of the statute. Regardless, a crewman is not permitted to choose as to what orders of the master he will obey but is bound to obey all lawful orders. see Command's Appeal Decisions Nos. 1621 and 1809). Appellant's belief that his Fifth Amendment rights were violated is also incorrect as the master was not acting under color of

authority of a state or federal official and the Fifth Amendment right against self-incrimination is expressly limited to criminal, not administrative actions.

CONCLUSION

I conclude that substantial evidence of a reliable and probative nature has been presented to support the findings of the Judge that Appellant wrongfully failed to obey a lawful order of the master.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 5 May 1976 is AFFIRMED.

E. L. PERRY
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 18th day of March, 1977.

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