

In the Matter of Merchant Mariner's Document No. Z-670189
Issued to: JOE JOE HUSTON BRICE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JOE JOE HUSTON BRICE

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.

On 27 February, 1953, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-670189 issued to Joe Joe Huston Brice upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a member of the steward's department on board the American SS ANCHOR HITCH under authority of the document above described, on or about 23 October, 1951, while said vessel was in the port of San Pedro, California, he wrongfully had in his possession narcotics; to wit, cannabis sativa L. (marijuana).

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 an attorney of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening

statement and entered into the following stipulation with Appellant's counsel:

Shortly after 0800 on 23 October, 1951, Port Patrol Officer Savage approached Appellant and asked him if he had anything to declare. After Appellant answered in the negative, a search of his person was conducted by Officer Savage and five marijuana cigarettes were found in the watch pocket of the trousers worn by Appellant. The watch pocket had been folded up under the belt and waistband in such a manner as to make detection of the five marijuana cigarettes difficult. Appellant was arrested and interviewed at the Customhouse. He refused to admit any knowledge as to the marijuana cigarettes being in the pocket of his trousers. Appellant's service on board the ANCHOR HITCH on 23 October, 1951, was also stipulated in evidence.

The Investigating Officer rested his case after he had introduced in evidence a certified copy of a Judgment of conviction against Appellant in the Superior Court of the State of California in and for the County of Los Angeles on 10 January, 1952. This document states that Appellant was "found guilty . . . of VIOLATION OF SECTION 11500, Health and Safety Code of the State of California (Possession), a felony, as charged in the information" and ordered to be imprisoned "in the County Jail of the County of Los Angeles for the term of ninety days."

Counsel made his opening statement before Appellant testified under oath in his own defense. Appellant stated that just before he was apprehended with the five marijuana cigarettes in his possession when going ashore, he had left his clothes on his bunk for about ten minutes while taking a shower; and during the latter time, Appellant's roommate, McCoy Thompson, remained in their quarters. Appellant also stated that since he was the steward's department delegate, he had been directed to draw up charges against Thompson after a meeting of the members of the steward's department; and that as a result of these charges pertaining generally to improper performance of duties, the union revoked Thompson's "trip card" (which gave him union hiring hall privileges) two days after the date of the offense alleged in the specification which is under consideration in this proceeding against Appellant's document. Appellant denied that he had ever smoked marijuana or possessed any narcotic drug.

Appellant also offered in evidence the testimony of one person and written statements by two other persons, all three of whom stated that Appellant's general character and reputation on board ship was very good. The criminal record of McCoy Thompson in California was received in evidence but it contains no record of any narcotics charge. Counsel for Appellant then rested his case.

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 findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-670189.

From that order, this appeal has been taken, and it is urged that:

POINT I. The Examiner's findings are not supported by the evidence. The Examiner accepted the judgment of conviction against Appellant in the California court, for possession of a narcotic, as conclusive. Despite the requisite element of "knowledge of physical possession," the Examiner failed to consider Appellant's consistent denial of "knowledge," the accessibility of Appellant's clothing to others, and the possibility that Thompson "planted" the marijuana in Appellant's trousers.

POINT II. The Examiner's decision is not supported by the findings. The Examiner's findings show that a prima facie case was not established. Assuming the charge was proved, the Examiner should have considered Appellant's past good record and the evidence in the record as to his character and reputation.

It is requested that the order of revocation be modified to an

official reprimand or a probationary suspension.

APPEARANCES: Messrs. Gladstein, Andersen and Leonard of San Francisco by Rubin Tepper, Esquire, of Counsel.

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

FINDINGS OF FACT

On 23 October, 1951, Appellant was serving as a bedroom utilityman on board the American SS ANCHOR HITCH and acting under authority of his Merchant Mariner's Document No. Z-670189 while the ship was docked at San Pedro, California.

On this date, Appellant was searched by Port Patrol Officer Savage when Appellant was leaving the ship. Officer Savage found five marijuana cigarettes in the watch pocket of the trousers worn by Appellant. The watch pocket had been folded up under the belt and waistband so as to make it difficult to discover the presence of the marijuana cigarettes. At the time, Appellant denied that he knew the marijuana cigarettes were on his person.

Appellant is 38 years of age, married, and has three children. There is no record of prior disciplinary action having been taken against Appellant during his seven or eight years at sea.

OPINION

Proof of actual physical possession of the marijuana cigarettes was sufficient to raise the prima facie presumption that Appellant had knowledge that the marijuana was on his person. Although this is a rebuttable presumption, it may be overcome only by substantial evidence to the contrary. *Wolfgang v. Burrows* (CCA DC, 1950), 181 F2d 630. Therefore, I am in accord with the Examiner's statement to the effect that the speculative possibility of the marijuana having been "planted" was not sufficient to overcome this presumption.

It is also noted that the Examiner did not base his conclusions upon Appellant's conviction in the California court, as

Appellant contends on appeal, but upon the proof of physical possession of the marijuana as set forth in the stipulation between counsel and the Investigating Officer. The Examiner considered Appellant's denial of knowledge (Finding No. 9) but he obviously was not convinced by it. The weight to be attached to a denial, under circumstances where a person's knowledge of the presence of the narcotic in his possession is material, is for the jury to determine. *Gee Woe v. U.S.* (CCA 5, 1918), 250 Fed. 428, cert. den. 248 U.S. 562. The latter case is in agreement, on this point, with the case of *People v. Gory*, 28 C.2d 450, 170 P.2d 433, upon which Appellant places great reliance. The lower California court was reversed because it failed, "on proper instructions, to submit to the jury the question as to whether defendant had knowledge of the presence of the marijuana."

The method in which the watch pocket was folded, so as to make detection of the marijuana difficult, is additional evidence of Appellant's knowledge of possession. And it is equally true that Appellant's testimony was not directly corroborated by any other evidence presented by him.

Since the policy of revocation must prevail in all narcotics cases, the Order of the Examiner will be sustained despite Appellant's prior clear record and evidence as to his good character and reputation.

ORDER

The Order of the Examiner dated at San Francisco, California, on 27 February, 1953, is AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 6th day of August, 1953.

***** END OF DECISION NO. 686 *****

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