

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1077222
AND ALL OTHER SEAMAN DOCUMENTS
Issued to: Wilbur M. Carlson

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1536

Wilbur M. Carlson

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 25 May 1965, an Examiner of the United States Coast Guard at San Francisco, California revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a musician on board the United States SS PRESIDENT WILSON under authority of the document above described, on 5 October 1964, Appellant wrongfully had possession of marijuana.

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

The Investigating Officer introduced in evidence the testimony of the two United States Customs Officials who found the substance suspected to be marijuana and the chemist at the United States Customs Laboratory who determined by analysis that the substance was marijuana.

Appellant offered no evidence in defense but rested on a motion to suppress the evidence on the ground that this was an unreasonable search and seizure in violation of the Fourth Amendment.

At the end of the hearing, the Examiner rendered a written ruling in which he denied the motion. He then rendered a written decision in which he concluded that the charge and specification had been proved and entered the order of revocation.

FINDINGS OF FACT

On 5 October 1964, Appellant was serving as a musician on board the United States SS PRESIDENT WILSON and acting under authority of his document while the ship was in the port of San Francisco, California upon completion of a foreign voyage. The ship had stopped at Honolulu, Hawaii before arriving at San Francisco on this date.

On the morning of 5 October, the Supervisor of the United States Customs Port Investigators and another Customs Port Investigator went on board the PRESIDENT WILSON, without a search warrant, to search the person and belongings of crew member Kaar who was one of Appellant's two roommates on the ship and was suspected of having narcotics in his possession. Appellant was not under suspicion. In the room shared by the three crew members, a search of Kaar's person and belongings disclosed no contraband.

During this time, Appellant was asleep in his bunk. He was awakened and agreed to a search of his locker which he then unlocked. Marijuana was found in a plastic bag in each toe of a pair of boots in the locker. Appellant admitted ownership of the boots and was taken into custody.

At the completion of this voyage, a general search for contraband was conducted on the pier but not on the ship.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the search in this case, without a warrant or probable cause, was not authorized by any statute since this was a special search rather than a general search of the ship and also because the border search cases have no application due to the fact that the ship was not entering the United States from a foreign country having last stopped at Honolulu.

Therefore, this was an unreasonable search in violation of the Fourth Amendment of the United States Constitution and the marijuana illegally seized is not admissible as evidence.

APPEARANCE: McBride, Coll and Conti of Concord, California by
Thomas F. McBride, Esquire, of Counsel.

OPINION

Appellant's contention that this was a search and seizure which violated Appellant's rights under the Fourth Amendment is without merit. The usual requirements of probable cause and a search warrant do not apply to searches of vessels by Customs Officers. Title 19 U. S. Code 1581(a) specifically authorizes 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, truck, package, or cargo on board * * *." Title 19 U. S. Code 1582 states that " *** all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government * * *."

The distinction between the authority to make border searches under these statutes and searches within the country was pointed out in *Boyd v. United States*, 116 U. S. 616 (1885):

"The search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him. The two things differ toto coelo. In the one case, the government is entitled to the possession of the property;

in the other it is not. The seizure of stolen goods is authorized by the common law; and the seizure of goods forfeited for a breach of the revenue laws, or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by our own revenue acts from the commencement of government. The first statute passed by Congress to regulate the collection of duties, the act of July 31, 1789, 1 Stat. 29, 43, contains provisions to this effect. As this act was passed by the same Congress which proposed for adoption the original amendments to the Constitution, it is clear that the members of that body did not regard searches and seizures of this kind as 'unreasonable,' and they are not embraced within the prohibition of the amendment."

It has repeatedly been stated that the search which Customs agents are authorized to conduct upon entry is of the broadest possible character and any evidence recovered may be used. *United States v. Massiah*, 307 F.2d 62 (2d Cir. 1962); *Landau v. United States Attorney*, 82 F.2d 285 (2nd Cir. 1936) cert. denied 289 U. S. 665; *United States v. Rodriguez*, 195 F. Supp. 513 (S.D. Texas 1960) aff. 292 F.2d 709; *United States v. Yee Ngee How*, 105 F. Supp. 517 (N.D. Cal. 1952).

Because of the right to determine whether a person entering the country has contraband in his possession, no question of whether there is probable cause for a search exists when the search is incidental to entering the country. *Rivera v. United States*, 327 F.2d 791 (1st Cir. 1964); *Bible v. United States*, 314 F.2d 106 (9th Cir. 1963) cert. denied 375 U. S. 862; *Mansfield v. United States*, 308 F.2d 221 (5th Cir. 1962); *Witt v. United States*, 287 F.2d 389 (9th Cir. 1961). This proposition is true whether the entry is by land (*Bible v. United States* and *Witt v. United States*, supra), by sea (*United States v. Massiah* and *United States v. Yee Ngee How*, supra), or by air (*Rivera v. United States*, supra *United States v. 532.33 Carats of Diamonds*, 137 F. Supp. 527 (D. Mass. 1955).

Relative to the contention that Appellant was subjected to a

special search as opposed to a general search of the ship, 19 U. S. Code 1581(a) states that Customs Officers may search any person on board at any time. *Witt v. United States*, supra, points out that the fact that the authorities do not search every person does not mean they have waived their right to search when they see fit to do so.

Appellant also claims that the border search cases do not apply because the ship entered the United States at Honolulu and not at San Francisco. In *United States v. Yee Ngee How*, supra, the court held that a Customs search of petitioner upon leaving the vessel, on the second day after completion of a foreign voyage, was proper although petitioner objected because his quarters on the ship had been inspected and he had gone ashore on the previous day. The court points out that 19 U. S. Code 1581(a) permits searches "at any time" without the limitation that the vessel must have returned from a foreign country. In appellant's case, the PRESIDENT WILSON was entering the country at San Francisco whether or not it was in the category of a vessel entering the United States from a foreign country after having stopped at Honolulu.

But it was also held in the *Yee Ngee How* case, supra, that the second search of the petition was within the terms of 19 U. S. Code 1582, which permits only the searching of "persons coming into the United States from foreign countries," because when petitioner returned to the vessel and again left, he was, for the purpose of a Customs inspection, a person coming into the United States from a foreign country. Even if Appellant went ashore while in Honolulu, the same reasoning requires the conclusion that the search of Appellant's locker was authorized under section 1582.

For these reasons, I conclude that the search of Appellant's locker by the Customs Officers was reasonable and, therefore, evidence concerning the marijuana found in the locker was admissible at the hearing.

ORDER

The order of the Examiner dated at San Francisco, California, on 25 May 1965, is AFFIRMED.

E.J. Roland
Admiral United States Coast Guard
Commandant

Signed at Washington, D.C., this 30th day of December 1965.

INDEX

CONGRESSMAN

letter to

MARIJUANA

possession of

SEARCH AND SEIZURE

admissibility of evidence

by Customs officers

locker, search of

***** END OF DECISION NO. 1536 *****

[Top](#)