

In the Matter of Certificate of Service No. E-291780
Issued to: RODNEY CLINTON CAMPBELL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

423

RODNEY CLINTON CAMPBELL

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 6 December, 1949, an Examiner of the United States Coast Guard at New York City revoked Certificate of Service No. E-291780 issued to Rodney Clinton Campbell upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as galleyman on board the American S. S. TILLAMOOK, under authority of the document above described, on or about 7 June, 1949, he wrongfully had in his possession approximately 455 grains of marijuana while said ship was in the port of New York after completion of a foreign voyage.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer made his opening

statement and introduced in evidence the testimony of two witnesses before resting his case.

In defense, Appellant testified, under oath, in his own behalf and produced evidence that he had been acquitted of the charge in the District Court of the United States for the Eastern District of New York.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of the specification and entered an order revoking Certificate of Service No. E-291780 and all other valid licenses, certificates and documents issued to Appellant by the U. S. Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged: that Appellant is innocent because he was acquitted on a directed verdict in the District Court of the United States for the Eastern District of New York and because the Examiner stated in his opinion that Appellant did not know that the substance he had in his possession was marijuana.

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

FINDINGS OF FACT

On a foreign voyage covering the date of 7 June, 1949, Appellant was serving as galleyman on board the American S. S. TILLAMOOK, acting under authority of his Certificate of Service No. E-291780.

While the ship was at a port in Venezuela prior to 7 June, 1949, a native gave Appellant a brown bag containing five hand rolled cigarettes and some loose weeds. In exchange for this, Appellant gave the native three bars of soap. The native merely told Appellant he would have something good to smoke on the way home. Appellant put the brown bag and its contents in his dungaree pocket. He later smoked one of the cigarettes before the ship arrived at the port of New York. Appellant testified that he noticed the cigarette he smoked was strong and he threw it away. He noticed no detrimental effects from the cigarette.

On 7 June, 1949, while the TILLAMOOK was anchored off Pier 24, Staten Island, New York, Customs Officers came aboard to search the ship for contraband and unmanifested merchandise. Appellant's room was searched by a Port Patrol Officer and the Appellant was asked if he had anything to declare. He replied in the negative but a search of his person revealed that he had in his back dungaree pocket a brown bag containing a weed and four hand rolled cigarettes plus a quantity of cigarette papers. Upon questioning, Appellant stated he did not know what the contents of the bag or cigarettes were and that he had gotten them from a native. The Port Patrol Officer suspected that this substance was marijuana and he took Appellant to the Customs Headquarters in New York. Subsequent analysis, at the Government Laboratories, disclosed that the brown bag contained 423 grains of marijuana and that the four cigarettes were made of marijuana. The weight of the cigarettes, including the paper, was 32 grains.

Appellant was indicted in the Eastern District of New York on charges based on the possession of this marijuana. On 27 September, 1949, a directed verdict of acquittal was entered by the District Court of the United States for the Eastern District of New York on the trial of the indictment. The record does not contain the reason for this acquittal.

Appellant has been going to sea for approximately eight years. His prior disciplinary record consists of a suspension for one month in 1944 and an admonition in 1948. Both of these were based on charges of misconduct.

OPINION

Appellant contends that he was proven innocent when he was acquitted of the charge in the District Court of the United States for the Eastern District of New York.

The prosecution instituted in the United States District Court was of a criminal nature while proceedings, such as this, are conducted pursuant to Title 46 United States Code 239 which is a remedial statute. This position is fortified by the statute itself which provides for the referral of any evidence of criminal liability to the Department of Justice for action by that

Department, thus recognizing and providing for the separability of penal from remedial or administrative functions. And it has been stated that in civil enforcement of a remedial sanction there can be no double jeopardy. Since this proceeding is not in the nature of a criminal prosecution, the acquittal of Appellant in the District Court of the United States for the Eastern District of New York is not in any way conclusive as to the outcome of this remedial action taken by the Coast Guard against Appellant's certificate of service.

The charge herein is "misconduct" and the specification alleges wrongful possession of marijuana. Unlike the Federal criminal prosecution, it is not necessary that a statutory violation be proven to sustain the charge of "misconduct". It is my view that a finding of guilt to a charge of "misconduct" under 46 United States Code 239, as amended, for wrongfully having possession of marijuana can be sustained if the Record shows that the person concerned knew, or had reasonable ground for suspicion or belief, that the substance in his possession was marijuana. Where a reasonable ground for suspicion or belief exists, it is not sufficient that the possessor plead ignorance that he did not factually know that the substance was marijuana; in such a situation, if he is not in a position to ascertain the fact definitely, he should forthwith destroy the substance, thereby avoiding any risk of being called upon to justify its possession. What basis may exist to warrant the creation of a reasonable suspicion in the mind of the average person depends upon the facts and circumstances in the particular case.

The evidence in the record conclusively establishes the fact that Appellant had marijuana in his possession aboard the TILLAMOOK; but Appellant denies that he knew what it was or that he had any suspicion as to its nature until he was apprehended by the Port Patrol Officer in the port of New York. The Examiner was convinced, by Appellant's repeated protestations of innocence, that he did not have any knowledge that the substance was marijuana.

While it is my opinion the Examiner was not required to find a violation of some statute in view of the wording of the specification under consideration; nor was it necessary, in these proceedings, to prove or find a "criminal" intent as a condition precedent to revocation of a seaman's document for possession of

marijuana, I am not satisfied the Record before me has developed facts sufficient to overcome Appellant's denial of wrongdoing.

In the past, several revocations have been affirmed on appeal despite the Appellant's protestations of ignorance respecting the nature or character of the commodity found by Customs officers on his person or among his effects. Revocation was sustained in the case involving "Dutch tobacco", (Appeal #308); and unidentified "grass", (Appeal #310). In Appeals #335 and 359 revocation was sustained against the protests of the Appellants that they had no knowledge the narcotic was on their person or in their effects until discovered by search.

The outstanding distinction between this case and those last mentioned is that in such other cases there were details, circumstances and facts developed at the hearing which failed to favorably impress the Examiner that the person charged was free from fault; or, which were clearly in conflict with such a defense. From a study of the Record in this case, it is believed that further evidence could be presented which might bring it in line with the earlier decisions.

This Record leaves too much to be supplied by implication, inference or assumption to support revocation of Appellant's document. Even in administrative proceedings there should be some more substantial evidence of wrongdoing than is presented in this case.

ORDER

The Order of the Examiner dated New York on 6 December 1949 is vacated, set aside and reversed. The Record is remanded to an Examiner in the Third Coast Guard District with direction that unless the Investigating Officer can and does, within a reasonable time, adduce further testimony or evidence more definitely establishing Appellant's wrongful possession of marijuana, the charge should be dismissed.

REVERSED AND REMANDED

Merlin O'Neill
Vice Admiral, United States Coast Guard

Commandant

Dated at Washington, D.C., this 7th day of April, 1950.

***** END OF DECISION NO. 423 *****

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