

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT No. (REDACTED)  
Issued to: Sofala Amataga

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2324

Sofala Amataga

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

By order dated 30 June 1982, an Administrative Law Judge of the United States Coast Guard at Alameda, California revoked Appellant's seaman's document upon finding him guilty of misconduct. The specification found proved alleges that while serving as utilityman on board the SS SANTA MARIA under the authority of the captioned document, on 20 October 1981, Appellant wrongfully possessed marijuana.

The hearing was held at San Francisco, California on 6 January, 29 January, 4 February, 24 March and 5 April 1982.

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 four documents and the testimony of two witnesses.

In defense, Appellant offered in evidence the testimony of one witness.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved and entered an order revoking all

documents issued to Appellant.

The Decision and Order was served on 12 July 1982. Appeal was timely filed on 28 July 1982 and perfected on 7 April 1983.

#### *FINDINGS OF FACT*

On 20 October 1981, Appellant was serving as utilityman on board the United States SS SANTA MARIA and acting under authority of his document. The SS SANTA MARIA had returned to the United States from a foreign voyage, calling first at Los Angeles, California and then at San Francisco where she was moored on the morning of 20 October. Routine customs searches were being made of property brought ashore from the ship.

A customs officer observed Appellant leaving the vessel with a quantity of luggage. He obtained a customs declaration from Appellant and commenced a search of the luggage with the assistance of a dog. During the search Appellant started to return to the ship with one parcel, but the customs officer stopped him. The dog reacted to that parcel, which was a transparent bag containing a rolled-up sheepskin. Inside the sheepskin, the customs officer found a substance wrapped in a newspaper which, upon field testing, proved to be marijuana. It was later weighed and found to be 265 grams (9.34 ounces).

#### *BASES OF APPEAL*

This appeal has been taken from the Decision and Order of the Administrative Law Judge. Appellant contends that it was error to deny the motion to suppress the evidence of marijuana because the evidence was fruit of an illegal search.

APPEARANCE: Brian E. KERSS of Weltin and Van Dam, San Francisco, California

#### *OPINION*

I will not address the legality of the search because I conclude that the exclusionary rule would not apply even if the search had been illegal. I have previously held that evidence obtained from a search, at least by non-Coast Guard personnel, is admissible in these proceedings whether or not the search was legal. Appeal Decisions No. [1598 \(RAMOS\)](#), [2135 \(FOSSANI\)](#), 2187 (CASTLEBERRY), and 2297 (FOEDISCH). I thoroughly analyzed the issue in *Foedisch*. The purpose of the exclusionary rule is to

deter future unlawful police conduct. Here, as in *Foedisch*, the search was conducted by Customs Officials. The exclusion of evidence from Coast Guard suspension and revocation proceedings would not deter an unlawful Customs search.

Appellant's citation of *Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965) does not help him. That case involved the penal forfeiture of an article used in criminal activity. As I noted in *Fossani*, the proceeding was of a different nature from these suspension and revocation proceedings. *Plymouth Sedan v. Pennsylvania* is not applicable here.

#### CONCLUSION

There was substantial evidence of a reliable and probative character to support the findings of the Administrative Law Judge. There was no error in admitting the evidence of marijuana. The hearing was conducted in accordance with the requirements of applicable regulations.

#### ORDER

The order of the Administrative Law Judge at Alameda, California on 30 June 1982 is AFFIRMED.

J.S. GRACEY  
Admiral, U.S. Coast Guard  
Commandant

Signed at Washington, D.C., this 16th day of September 1983.

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