

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Cecar F. Robinson (REDACTED)

DECISION OF THE COMMANDANT ON REVIEW
UNITED STATES COAST GUARD

2245

Cecar R. Robinson

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

By order dated 27 February 1980, and Administrative Law Judge of the United States Coast Guard at New York, New York, after hearings at New York, New York, on 29 November and 18 December 1978, and on 24 January, 14 February, 14 March, 9 May, 4 and 27 June, 9 and 16 July, 17 August, 19 September, and 7, 19 and 26 November 1979, revoked the captioned document upon finding Appellant guilty of misconduct. The single specification of the charge of misconduct proved, alleges that Appellant, while serving as Fireman/Watertender aboard USNS ANDREW MILLER, under authority of his duly issued Merchant Mariner's Document, did, at or about 2400, 12 March 1975, at Yokosuka, Japan, while said was in the port of Yokosuka, Japan, wrongfully have in his possession certain narcotics to wit, heroin.

Appellant appeared and was represented by counsel. No formal arraignment was held and no plea appears on the record of any of the hearings. It is clear that the proceedings were conducted as if a "not guilty" plea had been entered. Appellant was fully advised of the charges and specifications against him and of his

rights. As in Decision on [Appeal No. 867](#), there was no prejudice to Appellant because the hearing was conducted as though a plea of "not guilty" had been entered.

The Investigating Officer introduced in evidence an affidavit of service of the Charge Sheet; certification by the Military Sealift Command that Appellant was assigned to USNS from 21 September 1974 until 14 March 1975, that their marine employees must hold current Coast Guard endorsements, and that Appellant was serving under his document [REDACTED] as a fireman/watertender on the USNS ANDREW MILLER from 21 September 1974 until 14 March 1975; the trial observers' report and the English translation of the public trial of Appellant in the Yokosuka Branch of the Yokohama District Court, Yokosuka, Japan, which was completed on 21 November 1975, and which was certified and authenticated by U.S. Navy Officials; a 15 March 1979 letter from the American Counsel in Tokyo, Japan; a 5 April 1979 letter from the U.S. Navy Commander of Fleet Activates in Yokosuka, Japan; and a 26 October 1978 letter from Commandant (G-MMI-2) showing Appellant's prior record of failure to join his vessel on 29 December 1969.

In defense, Appellant offered in evidence the deposition of LCDR Michael A. Kelly, one of the trial observers at Appellant's Japanese trial; seven Certificates of Discharge showing Appellant's service on three coastwise and four foreign voyages under authority of the above captioned document since his Japanese court conviction; a letter of 3 January 1979 from Commandant (G-MMI-2) showing Appellant was placed on the seaman wanted listed in January 1976; two certifications of training completed by Appellant; and three character reference letters supporting Appellant's good character.

After the hearings, the Administrative Law Judge rendered a written decision in which he concluded that the charge and single specification alleging misconduct by possession of heroin on 12 March 1975 had been proved. He then entered an order revoking the above captioned document and all other valid licenses, documents, certificates, and endorsements issued to Appellant.

The decision was served on 5 March 1980. Appeal was timely filed on 24 March 1980 and perfected on 21 August 1980.

FINDINGS OF FACT

On 12 and 13 March 1975, Appellant was serving as Fireman/Watertender on board the United States Naval Ship ANDREW MILLER and acting under authority of his document while the vessel was in the port of Yokosuka, Japan.

At approximately 2400 on 12 March 1975 Appellant possessed approximately 8.84 grams of heroin in Yokosuka, Japan, and made an admission of this fact to the three Japanese judges during his trial.

Appellant identified a vinyl bag of heroin at trial as his and the one for which he was arrested.

Appellant identified at his trial 0.07 grams of heroin wrapped in a one dollar bill as the heroin that he produced to the police of his own violation after a search on 13 March 1975, which produced no narcotics.

Appellant possessed heroin on USNS ANDREW MILLER and ashore in Yokosuka, and admitted this in testimony at his Japanese trial.

Appellant was sentenced by the Japanese court to imprisonment for two years and six months on 21 November 1975 upon being found guilty of possession of heroin, and possessing heroin in a conspiracy for the purpose of gain.

BASES OF APPEAL

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

- (1) inadmissible evidence was admitted at the hearing.
- (2) there was not admissible scientific evidence that the substance Appellant possessed was a narcotic drug;
- (3) the finding of misconduct was not supported by substantial evidence;
- (4) prosecution of these charges is barred by laches;

OPINION

I

Appellant's first basis of appeal was not well founded. The trial observers' report and the English translation of the Japanese judgment of conviction were properly admitted into evidence. Rule 803(8)(B) of the Federal Rules of Evidence (F.R.E.) provides a basis for admitting the trial observers' report and accompanying English translation of the Japanese judgment. This matter was properly authenticated and attested to, and the American Consul in Japan attested that the Navy was the proper custodian of this type of record. Rule 901(b)(7), F.R.E. states that authentication or identification of evidence is satisfied by evidence that a writing authorized by law to be recorded and in fact recorded in a public office where items of this nature are kept.

The Treaty of Mutual Cooperation and Security Between the U.S. and Japan provided the legal basis for trial observers' reports. This report was filed with the Navy Judge Advocate General, who authenticated and attested to the report and English translation as a copy of the original required to be filed with that office as the proper custodian of Japanese convictions for seaman in USNS ships. The U.S. Consul in Tokyo confirmed that the Navy was the proper custodian.

For all the reasons discussed, Investigating Officer's Exhibit No. 5 was properly admitted in evidence, and was properly authenticated and attested as required by Rule 901, F.R.E. The fact that the Japanese court has an original Japanese version of the judgment does not affect the admissibility of the English Translation and trial observers' report.

Appellant's contention that there must be scientific evidence that the substance possessed is heroin is erroneous. In the Japanese trial there was such evidence, but it was not necessary because Appellant testified at this trial that he possessed heroin.

Appellant's third basis of appeal must fail also. In Decision on Appeal Nos. [1769](#), [1901](#), and [2001](#), it is well established that a properly authenticated copy of a foreign judgment is an official or business record exception to the hearsay

rule, and is *prima facie* evidence of the facts in the case. A Decision on [Appeal No. 1901](#) emphasized, only probative evidence of a high order should undermine a foreign court judgment. Here there is no evidence produced by Appellant to affect the *prima facie* case established by the foreign conviction record. The Administrative Law Judge's findings, which were based on the properly admitted foreign court judgment, will not be overturned unless they are arbitrary and capricious. Such is not the case here.

Appellant's laches defense also fails. The standard is that there must be an inexcusable delay and substantial prejudice to Appellant in preparing his defense, which is caused by the inexcusable delay. Decision on Appeal Nos. [1382](#) and [2064](#). In the latter case the record was full of evidence of prejudice, such as three key witnesses disappearing, all witnesses having difficulty recalling events, and one witness dying. In this case, no witnesses had died or disappeared and LCDR Kelly's deposition made it clear that he could testify using the trial observers' report to refresh his recollection. The Appellant's counsel could have provided the report to LCDR Kelly to refresh his recollection, without introducing it into evidence or waiving objection to its authenticity. Having chosen this course of action, Appellant cannot claim prejudice in preparing his defense. There was no prejudice in the record or on appeal, and therefore the defense of laches must fail.

CONCLUSION

The findings are based upon substantial evidence from the record as a whole, and support the allegation that Appellant was guilty of misconduct in possessing heroin in Yokosuka, Japan on or about 12 March 1975.

ORDER

The order of the Administrative Law Judge entered at New York, New York on 27 February 1980, is AFFIRMED.

J. B. HAYES
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 29th day of April 1981.

***** END OF DECISION NO. 2245 *****

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