

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: George R. Young (Redacted)

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2254

George R. Young

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 6 March 1979, an Administrative Law Judge of the United States Coast Guard at New York, New York revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleged that while serving as fireman-watertender on board SS AFRICAN NEPTUNE under authority of the document above captioned, on or about 20 October 1977, Appellant had in his possession 1909.2 grams of marijuana, a controlled substance.

The hearing was held at Philadelphia, Pennsylvania, on December 13, 1978 and continued through February 7, 1979.

At the initial hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification. The counsel representing Appellant at the hearing before the Administrative Law Judge failed to appear on several occasions, despite agreed dates. On 8 January 1979, the hearing proceeded without the presence of Appellant's counsel. At a subsequent session counsel did appear, and was afforded the opportunity of recalling the principal witness presented by the Investigating Officer. Appellant is now represented by substitute counsel.

The Investigating Officer introduced in evidence the testimony

of two witnesses and two documentary exhibits.

In defense, Appellant offered in evidence his own testimony and one documentary exhibit.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant revoking all documents issued to Appellant.

The entire decision was served on 17 February 1981. Appeal was timely filed on 18 February 1981 and perfected on 14 May 1981.

FINDINGS OF FACT

On 20 October 1977, Appellant was serving as Fireman-Water Tender on board SS AFRICAN NEPTUNE and acting under authority of his document while the vessel was in the port of Philadelphia, Pennsylvania.

Officer Phillip A. Padlo, of the U.S. Customs Patrol, had occasion to be in the area of the international terminal where AFRICAN NEPTUNE was berthed on the date in question. Officer Padlo responded to a radio request for a backup vehicle, which took him to the vicinity of an exit gate at the north end of the terminal. While there he observed Appellant, in the company of a second man, apparently departing the dock area. Appellant was carrying a two-foot square cardboard box. The patrol Officer elicited identification from each man; in Appellant's case it took the form of a Merchant Mariner's Document. Appellant stated that he was employed on NEPTUNE and was removing personal items from the ship. The officer examined the contents of the box and discovered a quantity of vegetable matter, which subsequently proved to be marijuana. Appellant asked the Patrol Officer to throw the bags containing the marijuana into the river.

Appellant was taken into custody. During a subsequent search at the Customs Office, nine "cigarettes" were taken from Appellant. Laboratory analysis of the cigarettes and the substance from the box, by the Philadelphia Police Laboratory, confirmed that the substance in the bags and in the cigarettes was marijuana, a controlled substance.

BASES OF APPEAL

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

Law Judge erred in the following particulars:

1. In finding that Appellant had the substance at issue in his possession;

2. In failing to find that Officer Padlo could not personally identify the illicit substance as having been taken from the vessel;

3. In failing to find the R.S. 4450 proceedings barred by the doctrine of *res judicata* ;

4. In failing to suppress the evidence as to the controlled substance it was obtained during an illegal search, without administration of a warning against self-incrimination.

APPEARANCE: Freedman and Lorry, Esqs., of Philadelphia, Pennsylvania, by Martin J. Vigderman, Esq.

OPINION

I

The evidence of record establishes that Appellant, from the time he came into the view of Officer Padlo, was in possession of the controlled substance - both that in the box and the quantity in cigarette form in his pocket. The evidence also established that Appellant claimed ownership of the box. Appellant testified that he was never carrying the box and that, although he claimed ownership, it was not his. To the extent the testimony on this point is in conflict, it is readily apparent that the Administrative Law Judge did not find Appellant's testimony credible. It is a recognized function of the trier of fact to resolve conflicts in testimony and issues of credibility. On appeal, such determinations will be upheld unless clearly erroneous. Decisions on Appeal 2212, 2108, 2097, 2082. I find nothing in this case which would justify second-guessing the decision of the Administrative Law Judge on which testimony to credit in regard to possession of the box. A different result might have obtained had the purported owner of the box been called to testify. However, despite several continuances, and an offer by the Administrative Law Judge to issue a subpoena for that purpose, Appellant did not produce the witness to support his claim.

Appellant correctly noted that Officer Padlo could not state from personal knowledge that the box originated aboard AFRICAN NEPTUNE. The gravamen of the charge herein is possession of a

controlled substance. The source of the contraband is not material to this charge, so long as Appellant was acting under authority of his document. See Decision on Appeal 1262

II

The *res judicata* issue raised on appeal was also addressed during the R.S. 4450 hearing, in the context of a motion to dismiss. Appellant contends that a judgment of not guilty of possession with intent to deliver a controlled substance, in the Criminal Section of the Philadelphia Municipal Court precludes Coast Guard action against his document. Appellant's assertion is without merit.

As has oft been stated, R.S. 4450 proceedings are remedial administrative proceedings, fundamentally concerned with notions of maritime safety. Decisions are taken on the basis of substantial evidence and no criminal record or sanctions attend the proceedings. The authority exercised by the Administrative Law Judge extends only to the license or document of the seafarer appearing before him.

The doctrine of *res judicata* has only limited application in the law. Even were an administrative proceeding strictly bound by the doctrine, the fundamental conditions for calling it into play would have to be satisfied. Those conditions are commonly spoken of as "identities", such as identity of cause of action, of persons and parties to the action, and a final judgment conclusive as to the rights of those parties. The substance of the doctrine is that a matter once judicially decided is not subject to additional litigation.

It should be readily apparent that the doctrine has no application on the facts of this case, even pre-supposing it would ever apply to R.S. 4450 proceedings. The requisite identities are absent. The Coast Guard was not a party to Appellant's criminal trial; neither was the charge therein the same charge as brought by the Investigating Officer. Additionally, while a final a final judgment by a court of competent jurisdiction is a bar to subsequent actions, the Philadelphia Municipal Court was not competent to adjudicate Appellant's fitness to serve under a federally issued Merchant Mariner's Document. That authority is reserved to the Commandant of the Coast Guard by preemptive federal statute. Neither did the Philadelphia Court consider mere possession as an actionable offense; Appellant was tried on a charge of possession with intent to deliver. The quantum of proof required for a criminal conviction differs markedly from the quantum of proof in an administrative proceeding. This variance in

the quality of proof is also destructive of the effort to invoke *res judicata* as a controlling rule of law in R.S. 4450 proceedings.

It may well be that in appropriate cases, a conviction in a criminal matter would supply the quantum of evidence necessary to justify an Administrative Law Judge finding a charge proved in an R.S. 4450 proceeding. There have been such cases in the past. See Decisions on Appeal 1064, 940, 895. Not all criminal convictions may be used in this fashion, however, as careful attention must be given to the charges raised in the respective proceedings.

Congressional sanction of the use of a criminal conviction in R.S. 4450 proceedings was expressly given for cases involving narcotic drug law convictions. 46 U.S.C. 239b(1). Use of convictions in other contexts is permissible, subject to the foregoing discussion and precedent.

III

The Administrative Law Judge determined that controlling law and precedent supports reasonable searches of vessels, vehicles, and persons located at international port facilities by U.S. Customs Patrol personnel. *United States v. Beck & Murray*, 483 F.2d 203(3rd Cir. 1973), *cert. denied* 94 S.Ct. 873 (1974); *NTSB Order EM-20*, 1 NTSB 2292 (and cases cited therein); Decision on Appeal 2238.

Despite Appellant's recantation of his claim of ownership and Officer Padlo's lack of direct knowledge as to the source of the box, it is clear that based on Appellant's statements at the time, the Officer could reasonably conclude that the vessel was the source of the box. Additionally, the evidence established that the port facility also contained bonded storage space which is subject to special control under customs law. Given the attendant circumstances, I conclude that the stop and search conducted by Officer Padlo was reasonable and within the authority granted him by law. The pervasive historic regulation of waterfront facilities, for purposes of collection of customs, supports the view that a search which might be considered intrusive under other circumstances is acceptable in the limited area of an international port facility in light of the more lenient standard applicable. In such a case, it is clear that a search warrant could not reasonably be obtained to facilitate customs enforcement operations in the time involved, taking into consideration the ease with which contraband could be secreted or destroyed. Evidence adduced by such a search is admissible in these administrative proceedings for

whatever it might be worth.

CONCLUSION

The charge raised in this case was proved by substantial evidence of a reliable and probative character. The proceedings were properly conducted, and the penalty imposed is consistent with the underlying statute.

ORDER

The order of the Administrative Law Judge dated at New York, New York, on 6 March 1979, is AFFIRMED.

J. B. HAYES
ADMIRAL, U. S. COAST GUARD
COMMANDANT

Signed at Washington, D.C., this 22nd day of July 1981.

***** END OF DECISION NO. 2254 *****

[Top](#)