

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1211750
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Anthony TORRES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1779

Anthony TORRES

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 20 December 1968, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a steward/yeoman on board SS UNITED STATES under authority of the document above captioned, on or about 17 October 1968, Appellant:

- (1) wrongfully had in his possession aboard the vessel at New York, New York, 26.5 grams of marijuana and
- (2) wrongfully had in his possession aboard the vessel at New York, New York, 14 reels of obscene and pornographic film.

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

specification.

The Investigating Officer introduced in evidence the testimony of a Customs inspector, a voyage record of UNITED STATES, and a Customs laboratory analysis report.

In defense, Appellant offered in evidence his own testimony and three photographs of his room aboard UNITED STATES.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on 20 December 1968. Appeal was timely filed on 6 January 1969 and perfected on 30 April 1969.

FINDINGS OF FACT

On 17 October 1968, Appellant was serving as a steward/yeoman on board SS UNITED STATES and acting under authority of his document while the ship was at New York, New York.

At about 0800 on that date, one Dominick S. Sieni, a Customs port investigator stationed in New York, boarded UNITED STATES which had just returned from a foreign voyage. He sought out Appellant and asked to be taken to his room. Appellant led him to D-11, a passenger state-room to which Appellant had been assigned on departure from England.

En route to the room Appellant was asked whether he had any pornographic film or narcotics in his room. He admitted that he had pornographic film but denied that he had any narcotics. On arrival at D-11, Appellant gave Sieni 14 reels of pornographic film. Sieni searched the room, of which Appellant was the sole occupant, and found concealed in the space between a drawer and the side of the bureau a plastic bag which proved to contain 26.5 grams of marijuana.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner.

Appellant's first three "Points" are labeled "The Testimony of the Government", "Testimony of Person Charged", and "The Order of revocation is arbitrary, capricious, unreasonable and unsupported by any degree of credible evidence." The three add up to a single claim that the Examiner's decision is not based on substantial evidence.

Appellant's fourth "Point" is devoted to the specification to which he pleaded guilty, the possession of pornographic films. He urges that under *Stanley v. Georgia* (1969), 394 U.S. 557, his plea of guilty should be set aside and the specification dismissed.

APPEARANCE: Leo Ader, Esquire, New York, New York (at hearing), and Standard, Weisberg, Heckerling & Rosow, New York, New York, by Aaron J. Ballen, Esquire (on appeal).

OPINION

I

The major portion of Appellant's brief, containing extensive quotations from the record, is devoted to the argument that the Examiner's findings are not based on substantial evidence.

The Examiner heard the testimony of a Customs inspector that in the course of a lawful "border" search of a vessel arriving from a foreign port he found secretion in a room of which Appellant was the sole occupant a package of marijuana. He heard Appellant testify that the marijuana was not his, and that he did not know it was there. Appellant also offered evidence that other persons also had access to the room in the normal course of ship's business.

Appellant argues that the court in *Ingham v. Smith*, D.C. S.D. N.Y.(1967), 274 F. Supp.137, set "criteria" for a finding of wrongful possession of marijuana. This is not so. There is a recitation of certain evidence which the court found to be

substantial evidence such as to support a finding of wrongful possession of marijuana. It may be that the case against Ingham was stronger than the case against Appellant, but there is no implication in the decision that the same evidence must be present in all cases.

Also, that Appellant misconceives the facts in the Ingham case can be seen when he says, "In the Ingham case... the seaman... was the sole occupant and in sole control of a room and a desk aboard the vessel..." However, Appellant quotes at length from the decision. The last sentence of his first quotation is, "Plaintiff *and his roommate* stated that plaintiff was the only one who used the particular desk where the marijuana was found..." (Emphasis supplied.)

I take official notice that on every merchant ship, particularly with respect to passenger staterooms, persons other than the occupant have access to a room for a variety of purposes. I note only that Appellant here had more exclusive control over the room he occupied than Ingham did.

The Examiner accepted the testimony of the Customs inspector and found the marijuana to have been in Appellant's possession. He rejected Appellant's denials. It cannot be said that the testimony of the inspector was so inherently implausible that as a matter of law it should have been rejected.

Others might have given greater weight to Appellant's testimony, but the judgment of the trier of facts will not be disturbed when, as here, the evidence upon which he predicated his findings is seen to be substantial.

II

Appellant argues that under *Stanley v. Georgia*, (1969), 394 U.S. 557, his plea of guilty to possession of pornographic film must be set aside and the specification dismissed.

The decision in that case was limited to the possession of pornography "in the privacy of his own home", (at 568). From a

variety of circumstances, which need not be enumerated but one of which may be noted, e.g. the right of the master to search and of enforcement officers to search without warrant, it is evident that a seaman is not entitled to the same privacy in his quarters aboard ship as he is entitled in "his own home".

The Stanley decision does not require that the plea of guilty be set aside and that the specification be dismissed.

III

While Appellant has not raised this matter on appeal, probably recognizing that it is irrelevant, there is one thing I wish to discuss briefly because so much attention was given to it at hearing and because this decision is subject to further review.

Almost half the "Opinion" in the Examiner's decision is devoted to an analysis of *Escobedo v. Illinois* (1964), 378 U.S. 478 and *Miranda v. Arizona* (1966), 384 U.S. 436. While I agree with the Examiner that these decisions do not apply to administrative proceedings, I point out that there is not in this proceeding a situation comparable to the two cases discussed. The evidence of possession of marijuana, in this case, was developed as a result of a lawful search. No question as to any statement made by Appellant was raised. All references to the "Escobedo" doctrine and the "Miranda" doctrine in the record and in the initial decision are irrelevant.

ORDER

The order of the Examiner dated at New York, New York on 20 December 1968, is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 15th day of July 1969.

INDEX

Administrative Proceedings

Escobedo and Miranda inapplicable

Constitutional Rights

Escobedo and Miranda

Findings of Fact

Based on substantial evidence

Free to reject testimony of person charged when findings
are based on substantial evidence

Not disturbed when based on substantial evidence

Not upheld if evidence on which based inherently
incredible

Marijuana

Criteria for finding wrongful possession not stated in
Ingham v. Smith

Possession of

Pornographic Film

Possession on ship misconduct

***** END OF DECISION NO. 1779 *****

[Top](#)