IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z551795 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: James Shelton DAVIS

DEICSION OF THE COMMANDANT
UNITED STATES COAST GUARD

1789

James Shelton DAVIS

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 12 March 1969, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a fireman/watertender on board SSPIONEER GLEN under authority of the document above captioned, on or about 5 March 1965, Appellant wrongfully had marijuana in his possession.

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

The Investigating Officer introduced in evidence voyage records of PIONEER GLEN, the testimony of four officials of the Bureau of Customs, and certain records of the Bureau.

In defense, Appellant offered in evidence his own testimony

and that of the former master of PIONEER GLEN.

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

The entire decision was served on 13 March 1969. Appeal was timely filed on 21 March 1969 and perfected on 21 July 1969. Appellant has not yet complied with the Examiner's order.

FINDINGS OF FACT

On 5 March 1965, appellant was serving as a fireman/watertender on board SS PIONEER GLEN and acting under authority of his document while the ship was in the port of Boston, Massachusetts.

That morning two Customs officers, one of whom was Daniel T. Gustafson, came to Appellant's room and knocked on the door. Appellant directed them to come in. As they entered, they identified themselves and told Appellant that they wished to search the room. Appellant was then lying in his bunk, the upper of the two in the room.

Appellant identified his locker and his suitcase. In the locker Gustafson found Appellant's jacket. A marijuana cigarette was found in a pocket of the jacket. In the suitcase was a pair of Appellant's "walking" shorts. In a pocket of the shorts was found marijuana residue.

Further search, after other agents had joined the first two, disclosed on the shelf alongside Appellant's bunk an open package of commercial American cigarettes. In the package, behind some standard cigarettes were five marijuana cigarettes.

After this finding, Walter J. Skerry, officer in charge of the search party, asked Appellant where he had obtained the cigarettes. Appellant replied that he had got them in Mexico.

Identification of the various seizures as marijuana was

verified by laboratory analysis.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

(1) The "confession" of Appellant should not have been received in evidence at the hearing because it would not have been allowed in a criminal trial under the "Miranda" doctrine;

(2) The "confession" was not admissible under 46 CFR 137.20-125a which says that an admission made voluntarily, in the presence of a person other than a Coast Guard investigator and other than in the course of a Coast Guard investigation, may be testified to, because under the "Miranda" doctrine the admission was not voluntary; and

(3) without the "confession" there is no case against Appellant because other persons had access to his room and his roommate had motive and opportunity to "frame" him.

APPEARANCE: Abraham E. Freedman, of New York, New York, by Edward M. Katz, Esquire

OPINION

I

There is no reason to explore, on this record, whether the question directed to Appellant as to where he got the marijuana was "custodial interrogation" without adequate warning since the doctrine of *Miranda v. Arizona*, 384 U.S. 436 (1966), does not apply to this proceeding. The theory of "Miranda" is a "Fifth Amendment" concept.

A hearing conducted under R.S. 4450 is not a "criminal case." The rule applies only in criminal trials. When it was considered whether the rule should be made retroactive, the Supreme Court

decided that it should not, but that it should apply only to cases "the trial of which" began after the date of the decision. *Johnson v. New Jersey*, 384 U.S. 719 (1966).

Since the instant matter was not a "trial" and the instant matter is not a "criminal case," there is nothing to be resolved.

II

Even without the admission of Appellant the essential charge was proved anyway.

A marijuana cigarette was found in his jacket pocket before he was asked the allegedly damaging question. The marijuana residue was found in the pocket of his "walking" shorts before the question was asked.

These two facts would authorize the Examiner to find wrongful possession of the substance, without more.

The marijuana found in the package on the shelf was in a place within the normal exlucsive use of Appellant. Each bunk, the upper and the lower, had a shelf obviously designed for the use of the occupier of that bunk. On the shelf for Appellant's bunk were found letters addressed to Appellant. These facts, connected with the marijuana found in Appellant's jacket (in the locker) and shorts (in the suitcase), could justify belief that the marijuana on the shelf belonged to Appellant even without the later question and answer complained of.

III

Appellant suggests that without his statement that he bought the marijuana in Mexico the Examiner might have come to a different conclusion, and that the case should be returned to the Examiner for reconsideration, presumable with a direction not to consider the question and answer complained of. The theory seems to be that under such instructions the Examiner might be persuaded to accept Appellant's speculation that:

(1) some person unknown framed him, or

(2) his roommate, whom Appellant asserts to have

had motive and opportunity, had framed him.

Without reevaluating the Examiner's judgment as to what was substantial evidence in this case, it can be seen that Appellant's self-serving effort to cast suspicion on his roommate is not substantial evidence in its own right. Further, and without reference to the fact that Appellant testified at the hearing that he had made the questioned statement to the Customs officials but that he had lied at the time, Appellant's credibility was severely damaged before the Examiner.

On his direct examination, Appellant testified in effect that he had a "clear" record with respect to suspension and revocation proceedings under R.S. 4450. Under cross-examination, he admitted to one earlier suspension of his document and one official warning on his record.

If, for some reason, the Examiner should be told to reconsider the case without reference to Appellant's admission that he got the marijuana in Mexico, he would still have undisturbed his rejection of Appellant as a credible witness. He would still be faced with three separate seizures of marijuana from Appellant's possession.

IV

Possession of marijuana, established in this proceedings, calls for revocation of licenses and documents.

CONCLUSION

There is no reason to disturb the findings or order of the Examiner.

ORDER

The order of the Examiner dated at New York, New York, on 12 March 1969, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 8 day of June 1970.

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***** END OF DECISION NO. 1789 *****

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