In the Matter of Merchant Mariner's Document Z-324851
Issued to: MESSINA ABDULLAH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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MESSINA ABDULLAH

On 30 December, 1948, Messina Abdullah, a merchant seaman, was brought before an Examiner of the United States Coast Guard, under the provisions of R. S. 4450, on a charge of "misconduct", based upon the following specification:

> "In that you, while serving as oiler on board a merchant vessel of the United States, the SS GROTON TRAILS, under authority of your duly issued certificate, did, on or about 20 September, 1948, while said vessel was at Brooklyn, New York, have in your possession, contrary to law, certain narcotics; to wit, about 14 grains of crude opium."

Appellant, represented by counsel of his own selection, entered a plea of "not guilty" to the charge and specification. Testimony was received by the Examiner from a Port Patrol Officer of the Customs Service, a chemist of the Customs Laboratory, and Abdullah himself. At the close of the proceedings the Examiner found the specification and charge proved, and entered an order revoking Abdullah's Certificate of Service No. C-100849 and all other valid certificates, documents, or licenses issued to him by the United States Coast Guard. This appeal follows from that order. It comes

before me by virtue of Title 46 United States Code, Section 239 (g) and Volume 46 Code of Federal Regulations, Section 137.11-1.

As grounds for appeal, Appellant urges:

1. That the evidence before the Examiner was, in various particulars, insufficient to sustain the findings; and
2. That the evidence relating to the findings of the alleged opium was obtained as a result of an illegal search and seizure of Appellant's quarters and locker by Federal officers, in contravention of the Fourth Amendment to the Constitution, and should have been suppressed.

FINDINGS OF FACT

The evidence adduced at the hearing is not controverted. It may be summarized as follows:

The SS GROTON TRAILS, on which Appellant was serving as oiler, docked in Brooklyn, New York, on the evening of Saturday, 18 September, 1948, after a crossing from Glasgow, Scotland. Shortly after the docking, Appellant gathered up some clothing he had hanging on a line in his room and locked it in his locker, putting the key under his mattress. He and his roommate then went ashore, locking the door to their room. Customs agents searched Appellant and his baggage as he left the pier, with negative results.

On Monday, 20 September, 1948, the GROTON TRAILS was boarded by a searching party of the U. S. Customs Service. Two of the officers were instructed by the inspector-in-charge to locate Appellant and conduct a thorough search of his person and quarters. Appellant was found to be still absent from the ship. The officers procured the second mate to open the door to Appellant's quarters by means of a pass key, and later to force open Appellant's locker by means of a forcing tool. In the pocket of a shirt hanging in the locker the officers found a pellet about the size of a gum drop. They turned this over to the inspector who made a preliminary test on it; this test apparently disclosed the substance to be a narcotic. One of the officers then took the

pellet to the Customs Laboratory, where it was analyzed as crude opium.

When Appellant returned to the ship later that day he was taken into custody by the Customs Officers. He denied having any knowledge of the substance which was found in his shirt and implied that someone must have put it in his pocket to "frame" him. At the hearing he testified that he had washed his clothing, including that shirt, five days to a week before arrival in port, and that they had been hanging on a line in his room from that time until he locked them in his locker shortly after arrival of the ship in Brooklyn. He did not look in the shirt pockets at the time he put them in his locker. The room which he and his roommate shared was not locked while the vessel was at sea. He offered no satisfactory explanation as to how the opium might have gotten in his pocket.

DISCUSSION AND OPINION

Appellant urges that the finding of the narcotic in his room, which uncontradicted evidence shows was accessible to others, was not sufficient to establish proof of the charge and specification beyond a reasonable doubt. In support of this he refers to my action on the appeal of William J. Hudson, dated 28 May, 1947. In that case the Appellant had been found guilty of having 128 cartons of undeclared cigarettes in his possession. The cigarettes had been found in a compartment below the drawers in his bunk. He denied that he had any knowledge of the presence of the cigarettes there until found, and testified that his quarters were always unlocked and that he had not looked in that space under the drawers when the quarters were first assigned to him a few months previously.
In setting aside the order of the Examiner, I remarked:

> "The mere finding of the cartons in Appellant's room, which admittedly was accessible to others, counteracted by the consistent denial by the Appellant of any knowledge of them, coupled with his good record of long service at sea, is not sufficient, in my opinion, to establish proof of the charge and specification beyond a reasonable doubt."

It is evident that the Hudson case is similar in some respects

to the present one. However, there are important distinctions. In the first place, it is far more plausible to suppose that Hudson did not know of the cigarettes hidden in a secret and relatively inaccessible space *underneath* the bunk drawers than it is to suppose that the present Appellant did not know that a piece of opium the size of a gum drop was resting in the pocket of one of his shirts, locked in his locker. Hudson had no reason to pull out his drawers to see if anything was stored in the space underneath them, and testified that he had never done so. It is, of course, conceivable that Appellant might not notice a pellet of opium one inch in diameter in his shirt pocket, but it is evident his case is weaker than Hudson's in this respect. Secondly, it is conceivable that the hidden space in the Hudson case might have been used by a third party as a hiding place for illegal cigarettes. Hudson would be unlikely to look there. It would be a well-chosen spot both from the point of view of security, as well as diverting suspicion to another if discovered. But it is very difficult to conceive of anyone "hiding" a piece of opium having the dimensions of that shown by this record in another man's shirt pocket. Thirdly, there is an important distinction based upon the subject matter itself. Evidence of possession alone of opium is sufficient to authorize a conviction in a criminal prosecution under the Jones-Miller Act (21 U.S.C.A. Sec. 174). The statute places upon the accused the burden of explaining to the satisfaction of the jury how the opium happened to be in his possession. While we are not here dealing with a criminal prosecution, I see no reason why we should not give consideration to such statutory provisions in determining the sufficiency of the evidence before us. The public policy which prompted Congress to place a heavier burden upon one accused of illegal dealings with opium is no less applicable here than in a criminal prosecution. Under this view, prima facie proof of possession alone in the instant case is sufficient, if unexplained, to sustain the finding; in the Hudson case, it was incumbent upon the prosecution to prove that the accused was *knowingly* in possession of the undeclared cigarettes.

A survey of the federal court cases involving criminal prosecution for illegal possession of opium has failed to disclose any cases precisely in point but leads me to believe that the evidence here involved would be held sufficient to sustain a criminal conviction.

See *U. S. v. Caminata*, 194 F 903; *U. S. v. Kronenberg*, 134

F. 2d 483; *Lee Dip v. U. S.*, 92 F 2d 802, (cert. den. 303 U.S. 638); *Gee Woe v. U. S.*, 250 F 428. In the case of *Borgfeldt v. U. S.*, 67 F 2d 967, the Ninth Circuit Court of Appeals ruled that a requested instruction that the possession of opium must be "personal and exclusive" in order to invoke the terms of the statute was rightly denied by the trial court. In *NgSing v. U. S.*, 8 F 2d 919, 921, the same court, in discussing the sufficiency of evidence to sustain a conviction in a case where opium was found in an enclosed yard belonging to the Appellant, used the following significant language:

> "*** the mere fact that others might gain access to the premises by unusual or extraordinary means, or even by ordinary means, would not justify the court in determining the question as one of law, unless we are prepared to hold that a jury would in no case be warranted in finding that property concealed in a place under the control and dominion of a party accused of crime was in his *possession* as long as other parties had access to the premises or place of concealment. We are not prepared to so rule. No doubt the weight of such testimony depends upon the character of the property, the place of concealment, its accessibility to others, and many other circumstances but in the end the question is ordinarily one for the jury."

It cannot be said that the testimony before the Examiner afforded no substantial basis for a conclusion that Appellant did, in fact, have opium in his possession. This placed the burden of explaining such possession upon the Appellant. The Examiner was not satisfied with the "know nothing" explanation offered. I see no reason to disturb his conclusion.

Appellant questions the sufficiency of the evidence on another ground. He contends that there was no proof that the substance analyzed as opium in the Customs laboratory was the pellet which had been found in his shirt pocket. I find no merit in this contention. The Customs Officer who made the seizure testified that he personally took the evidence in question to the Customs Laboratory, and that he was present when the test was made (R.11). He further testified that he saw the evidence tagged as being opium of a certain number of grains (R.12). The Customs laboratory

chemist testified that she analyzed the substance which had been seized by the Customs Officer and found it to be crude opium, 14 grains. She read entries from the official records of the laboratory identifying the substance analyzed as that seized by the customs officer in the case of Messina Abdullah. (R.19, 20). I find this evidence amply sufficient to sustain the conclusion of the Examiner that the substance found in Appellant's shirt pocket was, in fact, crude opium.

We now pass to the contention that the search and seizure by which the opium was secured violated the Appellant's rights under the Fourth Amendment to the Constitution. It may be conceded that generally the entering and searching of a man's room in his absence without probable cause and without a search warrant would be illegal, and any evidence thereby disclosed would be incompetent in federal courts. But as I understand it, the usual requirements of probable cause and a search warrant do not apply to cases involving searches by Customs Officers of vessels arriving from foreign waters. 19 U.S.C.A. 1581 specifically authorizes such officers to "go on board of any vessel or vehicle at any place in the United States or within the customs waters . . . . . and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board. . ."A " reasonable search" of a ship returning from foreign waters is something entirely different from a "reasonable search" of the home of a citizen. This has long been recognized by the courts. In *Boyd v. U. S.*, 116 U.S. 616, 623, for example, Justice Bradley, speaking for the Supreme Court, stated:

> "The search for and seizure of stolen or forfeited goods, or goods liable to *duties* and concealed to avoid the payment thereof, are totally different things from a search or a seizure of a man's private books or papers for the purpose of obtaining information therein contained, or using them as evidence against him. The two things differ *toto coelo*. In the one case, the Government is entitled to the possession of the property; in the other, it is not. The seizure of stolen goods is authorized by the common law; and the seizure of goods forfeited for a breach of the revenue laws, or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries

> past; and the like seizure have been authorized by our own revenue acts from the commencement of the Government. The first statute by Congress to regulate the collection of duties, the Act of July 31, 1789, 1 Stat. 29, 43, contains provisions to this effect. *As this Act was passed by the same Congress which proposed for adoption the original amendments to the Constitution, it is clear that the members of that body did not regard searches and seizures of this kind as `unreasonable'*, and they are *not embraced within the prohibition of the amendment*." (Underscoring supplied)

And in *Carroll v. U. S.*, 267 U. S. 132, 154, the Supreme Court again stated:

> "Travelers may be stopped in crossing any international boundary because of national self protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in."

The Court of Appeals, Second Circuit, in the case of *Landau v. U. S. Att*. for the Sec. Dist. of N.Y., 82 F 2d 285, cert. den. 298 U. S. 665, ruled that a statute giving customs officers the right to search the baggage and persons of those entering the country was not in violation of the Fourth Amendment. It said (Pg. 286):

> "As early as 1799, the baggage of one entering the country was subject to inspection (1 Stat. 622). The necessity of enforcing the Customs laws has always restricted the rights of privacy of those engaged in crossing the international boundary. See *Carroll v. the U.S.*, 267 U.S. 132. *Neither a warrant nor an arrest is needed to authorize a search in these circumstances*." (Underscoring supplied).

Later in this same opinion (Pg. 286), it was remarked:

> "The search which Customs agents are authorized to

> conduct upon entry is of the broadest possible character and any evidence received might be used."

The principles which apply to a search of the person and baggage of people entering the country apply equally to a search of their quarters aboard ship as an integral part of the "vessel or vehicle". It is obvious that the national right of self protection would be seriously jeopardized if it were held that living quarters aboard ships coming in from foreign waters could be searched only under authority of a search warrant issued upon probable cause.

It may be argued, however, that though the right to search Appellant's quarters without a warrant existed, the breaking into his locker in his absence exceeds the bounds of reasonableness. To this I cannot accede. Seamen on incoming vessels know that their persons, baggage, and quarters are subject to inspection by Customs Officers. If they choose to go ashore before the searching party arrives, they must be held to waive any right they may have to be present when their gear and quarters are inspected. They cannot evade such an inspection and search by the simple expedient of locking their rooms or their lockers and leaving the ship.

There is, of course, a distinction between the right of seizure and the right of inspection. As was pointed out in the *Landau* case, the two are not necessarily co-extensive. Seizure of evidence normally is authorized only as an incident of lawful arrest. But there are numerous exceptions to this rule. It does not prevent a seizure of contraband or instrumentalities of crime which are discovered in the process of a lawful search.

CONCLUSION

My conclusion, therefore, based upon the foregoing discussion and a careful study of the record, is that this appeal is without merit. I find that the hearing was full and fair, and that the Appellant was accorded all of the rights to which he was entitled. I find that the evidence presented was competent and sufficient to sustain the order of the Examiner.

Appellant suggests in his appeal brief that aside from the other considerations raised, the penalty of complete revocation of his seaman's papers was too harsh. As I remarked in my action on the appeal of *Shon Fook*, Dated 31 May, 1949, I esteem it to be

my duty to protect, as far as possible, the many merchant seamen whose lives and property may be exposed to risk by the presence of one man who is involved in some phase of traffic in drugs or narcotics. Such a person is, in my opinion, a potential hazard and menace to his shipmates, the shipowner, and the American Merchant Marine. The over-all responsibility of the Coast Guard to minimize the perils of the sea does not permit the exercise of clemency in cases such as this. I find, therefore, that the Order is appropriate to the offense.

ORDER

It is ordered that the order of the Examiner dated 30 December, 1948, be, and it is, AFFIRMED.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., the 13th day of July, 1949.

***** END OF DECISION NO. 316 *****

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