

10-1-1982

Coast Guard Searches of Foreign Flag Vessels

Elizabeth Olga Ruf

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

 Part of the [Jurisdiction Commons](#)

Recommended Citation

Elizabeth Olga Ruf, *Coast Guard Searches of Foreign Flag Vessels*, 14 U. Miami Inter-Am. L. Rev. 355 (1982)

Available at: <http://repository.law.miami.edu/umialr/vol14/iss2/6>

This Case Note is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

RECENT CASES

Coast Guard Searches of Foreign Flag Vessels

United States v. Green
671 F.2d 46 (1st Cir. 1982)

Crew members of the British flag vessel, the *Persistence*, were indicted for possession of five tons of marijuana found in the vessel's lower compartment. The defendants, all United States citizens, were charged with conspiracy to import marijuana, in violation of 21 U.S.C. §§ 952(a), 963¹ and conspiracy to possess marijuana with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1), 846.² The defendants moved to suppress the marijuana, asserting that the Coast Guard search was violative of their fourth amendment right because no warrant had been issued. The district court originally denied the motion, but on reconsideration, granted the motion to suppress on the ground that the warrantless search below deck had violated the fourth amendment. The government appealed. The United States Court of Appeals for the First Circuit, *held*, reversed and remanded: 1) the boarding of the *Persistence* by the Coast Guard did not violate the Convention on the High Seas;³ 2) the Coast Guard was authorized under the Anti-Smuggling Act⁴ to board and search the *Persistence*; and 3) the boarding and the search of the *Persistence* did not violate the fourth amendment. *United States v. Green*, 671 F.2d 46 (1st Cir. 1982).

On April 11, 1980, the Coast Guard cutter *Reliance* encountered the *Persistence*, a 52 foot sloop flying the British flag, on the high seas, 55 miles east of Provincetown, Massachusetts. The *Persistence* was moving sluggishly and appeared lower in the bow than normal, indicating that the vessel was carrying a heavy load. The captain of the *Reliance* received information that the *Persis-*

1. Controlled Substances Import and Export Act, 21 U.S.C. §§ 952, 963 (1976).

2. Controlled Substances Act, 21 U.S.C. §§ 841(a), 846 (1976).

3. Convention on the High Seas, *opened for signature* April 28, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 (entered into force Sept. 30, 1962) [hereinafter cited as Convention]. Both the United States and Great Britain are signatories to this treaty.

4. Anti-Smuggling Act of 1935, 19 U.S.C. §§ 1701-1711 (1976).

tence was listed under "category 3" by the Drug Enforcement Agency's El Paso Intelligence Center, which meant that the vessel was suspected of illegal activities and should be boarded if possible.

The Coast Guard captain attempted to contact the *Persistence*. Although a man was seen in the cockpit, no one answered for two hours. Once contact was made, the man falsely identified himself as Charles Daniels. He gave the captain contradictory information, first stating that the vessel's last port had been Bermuda and then expressing distress about escaping from a hurricane in that area. It was discovered that there had been no hurricane near Bermuda. Several other factors aroused the Coast Guard's suspicions, and led the captain to request permission to board the vessel. Permission was denied. Since the vessel flew a British flag, the captain then sought authority to board from the British government. British authorities granted permission to board and search the vessel but also requested that the Coast Guard confirm United Kingdom registry by checking the registration number which is usually carved in the main beam of the vessel.

The Coast Guard notified the *Persistence* that the British government had given the Coast Guard consent to board the vessel. A boarding party was sent over, and the papers of the vessel and crew were checked. In order to locate the registration number of the vessel, the Coast Guard insisted upon going below deck. Once the hatch was opened, plastic and burlap wrapped bales were immediately visible. A test of the contents of the bales revealed marijuana. A search for the registration number disclosed previous United States registry; British registry was provisional.

The court of appeals first considered whether the Coast Guard's boarding and search of the vessel violated the Convention on the High Seas.⁵ The court agreed with the lower court that the British government's consent vitiated any violation of the Convention. Article 6 of the Convention provides that a vessel on the high seas is under the exclusive jurisdiction of the nation under whose flag it sails.⁶ The court initially asked whether article 6 is self-executing. If so, American courts would be prevented from exercising

5. Convention, *supra* note 3.

6. *Id.* at art. 6. Article 22 recognizes certain exceptions to this rule. The court held that none of those exceptions existed in the instant case, and that Article 22 does not function as a separate prohibition of interference. 671 F.2d 46, n.3.

jurisdiction over the vessel (i.e., the marijuana could be suppressed).

The court recognized that there were conflicting views on the self-executing issue, but found that it did not have to reach the issue because Great Britain had consented to the boarding and search of the *Persistence*. This consent constituted a waiver of the rights of the defendants under article 6,⁷ and therefore the treaty was not violated.

The First Circuit then reviewed case law, which supported the court's finding that the noninterference rule of article 6 is not breached when permission from a foreign flag ship's state is given to the Coast Guard to search a vessel.⁸ The policy of article 6 is to ensure freedom of access to the high seas by preventing arbitrary interference with vessels of one state by those of another. The court reasoned that permitting the flag state to authorize boarding by a foreign vessel did not interfere with this policy, but rather, recognized the flag state's ability to exercise authority over its vessels.

The court next considered United States statutory authority which permitted the Coast Guard to board and search foreign flag ships. Authority was found in the provisions of the Anti-Smuggling Act of 1935.⁹ A foreign government may agree by special arrangement to the boarding and search of a vessel which may be in violation of a treaty.¹⁰ The court treated Great Britain's consent as constituting such a special arrangement. This domestic statute is not in conflict with the Convention on the High Seas since both permit boardings when the flag state consents.¹¹

The court further examined statutory authority by looking at the provisions which establish that the Coast Guard may board and examine vessels by special arrangement.¹² The court concluded that there was ample statutory authority for the Coast Guard to board and search a foreign vessel on the high seas when the flag

7. 671 F.2d at 50.

8. *Id.* at 50-51. The court reviewed cases such as: *United States v. Williams*, 617 F.2d 1063 (5th Cir. 1980) (en banc); *United States v. Conroy*, 589 F.2d 1258 (5th Cir. 1979), *cert. denied*, 444 U.S. 831 (1979) *United States v. Rubies*, 612 F.2d 397 (9th Cir. 1979), *cert. denied*, 446 U.S. 940 (1980).

9. Anti-Smuggling Act, *supra* note 4.

10. 19 U.S.C. § 1581(h) (1976).

11. Convention, *supra* note 3, art. 6.

12. 19 U.S.C. § 1587(a) (1976); 19 U.S.C. § 1401(i)(1976).

state consents. Such authority was consistent with the United States obligations under the Convention on the High Seas. The boarding of the *Persistence*, therefore, met the requirements of both the statutes and treaties of the United States.

Finally, the court of appeals addressed the issue of whether the boarding and search of the *Persistence* violated the fourth amendment. The court began by noting that the circumstances and exigencies of the maritime setting afford people on a vessel a lessee expectation of privacy than in their homes, obviating the usual fourth amendment requirements of a warrant.¹³

The First Circuit adopted the Fifth Circuit's holding in *United States v. Williams*,¹⁴ concluding that a standard of reasonable suspicion is sufficient to justify a non-administrative maritime search. The court held that "in addition to permitting proper administrative searches, the fourth amendment allows government officers, who are otherwise authorized, to board and search a vessel on the high seas should they have reasonable and articulable grounds for suspecting that it is engaged in criminal activity."¹⁵ The court did not extend this standard to a search of living quarters or personal effects on board, nor did it decide what degree of cause might be deemed reasonable under the fourth amendment in such circumstances.

The court of appeals concluded that the officers of the *Reliance* had reasonable and articulable grounds for suspecting that the *Persistence* was smuggling marijuana. Only a few weeks before the incident which led to the defendants' indictments, a Coast Guard helicopter surprised the *Persistence* in a rendezvous with a fishing vessel, and the ships quickly separated in different directions. The Coast Guard had then boarded the *Persistence* and found a man who was a subject of a Drug Enforcement Administration warrant. Three days later, the Coast Guard located the fishing vessel and discovered marijuana residue in the hold. Since the cumulative facts indicated that there was a reasonable and articulable suspicion that the *Persistence* was carrying marijuana below deck, the court held that the marijuana was properly discovered and seized and should not have been suppressed.¹⁶

13. U.S. CONST. amend. IV.

14. 617 F.2d 1063 (5th Cir. 1980)(en banc).

15. 671 F.2d at 53.

16. *Id.* at 53-54.

This case is significant because it extends United States authority to board and search foreign flag vessels when the foreign state consents to such a search. As long as a United States officer has reasonable suspicion that a foreign flag ship is engaged in criminal conduct, he may seek consent from the foreign state to board the vessel. This case allows the United States, and in particular, the Coast Guard, to board and search ships on the high seas which are not subject to an American customs search, power of the United States even if the vessel never plans to dock at a United States port while on a particular journey. *United States v. Green*¹⁷ represents an extension of United States jurisdiction to prevent to importation of controlled substances into United States territory.

ELIZABETH OLGA RUF

17. *Id.* at 46.