

In the Matter of Merchant Mariner's Document No. Z-737339 and all
other Documents

Issued to: PERFECTO V. GONZALES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

885

PERFECTO V. GONZALES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 25 May 1955, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-737339 issued to Perfecto V. Gonzales upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a waiter on board the American SS PRESIDENT WILSON under authority of the document above described, on or about 10 October 1954, while said vessel was in the port of San Francisco, California, he wrongfully had in his possession a narcotic drug; to wit, heroin.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the two possible results of the hearing. Appellant was represented by counsel of his own choice. He entered a plea of "not guilty" to the charge and specification preferred against him.

Thereupon, the Investigating Officer made his opening

statement. It was stipulated that Appellant had in his pocket two pieces of paper containing powder which later was found to contain a usable quantity of heroin; and that Appellant said he had obtained this powder for treatment of a scratch on his face. After the Investigating Officer introduced in evidence the testimony of two Customs employees and a chemist, the Examiner denied counsel's motion to dismiss on the ground that Appellant's acquittal in California State court overcame the presumption of wrongfulness arising from the proof of physical possession of the heroin.

In defense, Appellant offered in evidence his sworn testimony and the testimony of a character witness. Appellant testified that he had purchased the packages from an unidentified woman in Yokohama in order to use the powder for cuts caused by shaving; but Appellant put the packages in his pocket and never opened them because he forgot about them.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order revoking Merchant Mariner's Document No. Z-737339 and all other documents issued to appellant.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 10 October 1954, Appellant was in the service of the American SS PRESIDENT WILSON as a waiter and acting under authority of his Merchant Mariners Document No. Z-737339 while the ship was docked at San Francisco, California.

At about 1630 on this date, Appellant had just left the ship when he was searched by a U. S. Customs Port Patrol Officer. The latter found two small paper packages containing white powder in the watch pocket of Appellant's trousers. The Customs Officer suspected that the powder was heroin. Appellant stated that he had purchased the two packages for the equivalent of 35 cents from a woman in Yokohama after she had recommended the powder for

treatment of a cut on his face which Appellant received while shaving. Analysis disclosed that high purity heroin was contained in the one-half grain contents of each package. Appellant at all times denied having knowledge that the packages contained a narcotic.

As a result of this incident, Appellant was tried before a jury in the Superior Court of the State of California in and for the City and County of San Francisco. On 4 March 1955, Appellant was found not guilty of violating the California Health and Safety Code, section 11500.

Appellant has been going to sea on U. S. merchant vessels since 1939. He has no prior record.

BASIS OF APPEAL

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

1. The Examiner erred in finding that it is common knowledge and was known to Appellant that heroin is readily available at low prices in the port of Yokohama.
2. The Examiner erred when he stated that the testimony of Appellant was unlikely and unacceptable under 46 CFR 137.21-5 which provides that the Examiner's decision must be supported by reliable, probative and substantial evidence.
3. the Examiner erred in not giving full weight to Appellant's acquittal by a jury in the Supreme Court of the State of California on the same facts. Since a State court judgement of conviction "constitutes substantial evidence adverse to the person charged" (46 CFR 137.15-5(b), a judgement of acquittal should constitute substantial evidence in favor of the person charged.

APPEARANCE: Jack C. Small, Esquire, of San Francisco,
California, of Counsel.

OPINION

The prima facie case, made out by the presumption that Appellant had knowledge as to the contents of the packages which were admittedly found on his person, was not overcome by Appellant's denial of knowledge. The Examiner, as the trier of the facts who was in the best position to judge the credibility of witnesses, rejected Appellant's denial of knowledge as well as Appellant's story as to how he obtained possession of the heroin. Appellant did not explain the possession to the satisfaction of the Examiner. See 46 CFR 137.21-10.

It is immaterial whether Appellant purchased the heroin in Yokohama or elsewhere; or whether it was common knowledge that it could be obtained at reasonable rates in Yokohama. Having rejected Appellant's testimony, the mere fact of physical possession constituted reliable, probative and substantial evidence of knowing, and therefore, wrongful possession.

The action against Appellant in the State court was recognized by the Examiner's specific finding that the jury rendered a verdict of not guilty; and his opinion that, on the whole record, the evidence failed to establish that the possession was not wrongful. Appellant's premise, that a State court judgement of acquittal should constitute substantial evidence in favor of the person charged, is not accurate since the degree of evidence required in criminal prosecution - proof beyond a reasonable doubt - is greater than the substantial evidence criterion applicable in these administrative proceedings. Hence, the Examiner was only required to consider rather than to follow, the determination by the State court. It is noted that the Examiner would not have been conclusively bound by a State court judgement of conviction as he would have been bound by a Federal court judgement of conviction. See 46 CFR 137.15-5.

Due to the serious nature of offenses involving narcotics, it is the regulatory policy of the Commandant to revoke the documents of all seamen found guilty, in these proceedings, of such offenses. 46 CFR 137.03-1.

ORDER

The order of the Examiner dated at San Francisco, California,

on 25 May 1955 is

AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 2nd day of May, 1956.

***** END OF DECISION NO. 885 *****

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