

In the Matter of Merchant Mariner's Document No. Z-798375
Issued to: WALTER HAMPTON, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

546

WALTER HAMPTON, JR.

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.

On 2 October, 1951, an Examiner of the United States Coast Guard at Honolulu, T. H., revoked Merchant Mariner's Document No. Z-798375 issued to Walter Hampton, Jr., upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as a waiter on board the American SS PRESIDENT CLEVELAND under authority of the document above described, on or about 11 June, 1951, while said vessel was at sea he wrongfully had in his possession a quantity of heroin (First Specification); and he wrongfully conspired with a member of the crew of said vessel, one Santiago Villanueva, to smuggle narcotic drugs into the United States of America (Second Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of Santiago Villanueva and Francis X. DiLucia, the Customs agent who had taken Appellant into custody.

In defense, Appellant offered in evidence his own testimony taken under oath.

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 findings and concluded that the charge had been proved by proof of the specifications and entered the order revoking Appellant's Merchant Mariner's Document No. Z-798375 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that there is no evidence to substantiate the charges except the

testimony of Santiago Villanueva who is an admitted dope smuggler; that Villanueva's testimony was emphatically denied by Appellant who has a perfect record; that Mrs. Quinones stated that Appellant was not implicated although Villanueva testified that he had told her the dope was given to him by Appellant; that Mrs. Quinones would readily have implicated Appellant, if Villanueva had told her the dope came from Appellant, since she readily implicated Villanueva and others; and that Appellant was tried and acquitted on a similar charge in the United States District Court for the District of Hawaii.

APPEARANCES: George Y. Kobayashi, Esq., of Honolulu, T. H. of Counsel.

FINDINGS OF FACT

On 11 June, 1951, Appellant was serving as a waiter on board the American SS PRESIDENT CLEVELAND and acting under authority of his Merchant Mariner's Document No. Z-798375 while the ship was at sea enroute to Honolulu, T. H.

On 9 June, 1951, the person charged approached Santiago Villanueva (also known as "Chico") and asked him to contact a Mrs. Quinones, a third class passenger, in order to find out if she would be interested in earning some money by taking a quantity of "dope" (later ascertained to be heroin) ashore for some other people when the ship arrived at Honolulu, T. H. Subsequent to this time and prior to 11 June, 1951, Villanueva mentioned the proposition to Mrs. Quinones and found that she was agreeable. Villanueva communicated this information to Appellant and gave him some white plastic material in which to wrap the heroin.

On 11 June, 1951, Appellant gave one package of heroin to Villanueva who, in turn, showed it to Mrs. Quinones and told her that she would get one hundred dollars for taking two such packages off the ship. Villanueva then retained the package in his possession and hid it in a locker. On 13 June, 1951, Appellant turned over a second package of heroin and one hundred dollars in bills to Villanueva. At approximately 0530 on the morning of 14 June, 1951, Villanueva gave Mrs. Quinones the two plastic wrapped packages from Appellant, another package of heroin, and some equipment with which to conceal the heroin on her person.

The PRESIDENT CLEVELAND entered Honolulu harbor between 0800 and 0900 on 14 June, 1951, and moored alongside Pier 8. Arrangements were then made for Mrs. Quinones to meet Appellant and Villanueva at 1100 in a park across the street from Pier 8. Mrs. Quinones did not know Appellant or that he was implicated in the plot to smuggle heroin ashore. If she had heard Appellant's name mentioned by Villanueva, she probably had forgotten it. Appellant could recognize Mrs. Quinones from having seen her talk with Villanueva on different occasions aboard the ship.

When Mrs. Quinones attempted to leave the vessel on 14 June, 1951, she was detained by Customs Agent in Charge Francis X. DiLucia and five packages of heroin were found in her possession. Mrs. Quinones told the agent that she was trying to take the narcotics off the ship at the request of a friend named "Chico" who worked on the ship. Mrs. Quinones agreed to carry out her

prearranged meeting with "Chico." Agent DiLucia preceded Mrs. Quinones to the park across the street and stood behind some trees near a bench where Appellant was sitting and conversing with a man named Weston who was known to DiLucia as a "local narcotics character." Shortly afterwards, Mrs. Quinones left the vessel followed by Customs Agent Eifler.

Prior to Mrs. Quinones' delayed departure from the ship, Appellant and Villanueva had met in the park and since Mrs. Quinones was not there, Appellant had returned to the ship to look for her but he could not find her. Appellant again joined Villanueva in the park and told him that Mrs. Quinones was not aboard the ship. Villanueva then left the park after telling Appellant to stay and look for Mrs. Quinones and if he saw her to inform her that Villanueva would return in about fifteen minutes.

When Mrs. Quinones had crossed the street, Appellant motioned to her with his left hand and when she approached closer, he told her that Villanueva would be back soon and that he had left word for her to wait until he returned. Mrs. Quinones sat on the grass in back of the bench on which Appellant and Weston were sitting. The conversation between the latter two men became excited and they were preparing to leave when Agent DiLucia confronted Appellant between ten and fifteen minutes after Mrs. Quinones had been waiting for Villanueva to return. Upon questioning, Appellant revealed his name and that he worked on the PRESIDENT CLEVELAND as a waiter. A search of his person and his quarters aboard the ship failed to disclose any trace of narcotics.

Villanueva was apprehended a short time later and the three suspects were questioned at the Pier 8 Customs office. Mrs. Quinones identified "Chico" as the person who had given her the heroin and she readily implicated "some other persons." The record does not indicate that these other persons were specified by name. She stated that she did not know Appellant and did not know whether he had anything to do with the smuggling. Villanueva finally admitted having given the narcotics to Mrs. Quinones. He stated that part of it belonged to Appellant and the rest of it belonged to two men named Chester and Ruiz. Appellant denied having anything to do with the narcotics. He told Agent DeLucia that he had left the pier at about 1130 and was going to have his teeth fixed at the Marine Hospital when he saw "Chico" standing in the park and he asked Appellant if he was in a hurry; that Appellant said he was not in a hurry because he could not go to the hospital until 1300; and that Appellant had then agreed to wait in the park for Mrs. Quinones and tell her to wait for Villanueva.

As a result of this incident, Appellant was acquitted of the charge of possession of narcotics by the District Court of the United States in Honolulu; Villanueva was sentenced to one year and a day imprisonment; Mrs. Quinones was placed on three years' probation; and the man named Ruiz was sentenced to eighteen months' imprisonment upon a plea of guilty. The other man named Chester, who was implicated by Villanueva, proceeded to San Francisco and was subsequently apprehended but there is no statement in the record as to the final disposition of his case.

OPINION

Appellant's primary contention is that the evidence is inadequate to support the charge and specification because the only evidence against Appellant is the testimony of an admitted dope smuggler, Santiago Villanueva, and his testimony was emphatically denied by Appellant who had never been arrested or charged for any crime prior to this incident.

Of most importance, in connection with this, is the fact that the testimony of Customs Officer DiLucia substantially supports the testimony of Villanueva that there had been arrangements made aboard the ship to smuggle the heroin ashore and that Appellant was directly involved in this conspiracy. Officer DiLucia testified that he saw Appellant at the place of the prearranged meeting; that Appellant motioned to Mrs. Quinones and spoke with her; that Appellant was sitting on the same bench with a man suspected of being involved in local narcotic dealings; and that Appellant continued to converse with this man for more than ten minutes after he had delivered Villanueva's message to Mrs. Quinones. Appellant flatly denied the presence of the other man and specifically stated that he was sitting on the bench in the park by himself and that he remained there after delivering the message just "watching the people go and come." It is apparent that while Officer DiLucia's testimony supports that of Villanueva with respect to Appellant's implication in the plot, Appellant's testimony conflicts with that of both DiLucia and Villanueva on the most significant points. Therefore, it is impossible to substantially reconcile Appellant's testimony with that of the other two witnesses.

The Examiner accepted the material portions of the testimony of DiLucia and Villanueva by substantially agreeing with their testimony in his Findings of Fact. Although the Examiner included a resume of Appellant's emphatic denials in his decision, he did not adopt Appellant's story in his Findings of Fact; and the Examiner specifically stated that he "rejects the testimony of the person charged as to his presence in the park as not representing the whole truth." The Examiner is the best judge as to the credibility of witnesses appearing before him since he is able to evaluate their testimony with the assistance of personal observation of their appearance, demeanor, gestures and other factors which are not reproduced in the cold print of the record before me. In the absence of a showing in the record that the Examiner used irrational tests to determine the credibility of witnesses (HQ Appeal No. 529), I will accept his firsthand evaluation. In addition to simply rejecting most of Appellant's testimony by practically adopting the combined testimony of the other two witnesses as his Findings of Fact, the Examiner mentioned several reasons why he did not accept Appellant's explanation concerning his presence in the park: the improbability that Villanueva would have trusted a non-confederate with any phase of the operation; the improbability of such a singular coincidence; the absence of any motive on Villanueva's part (after the time of his conviction) to implicate an innocent man whom he had known for two and a half years; and the implausibility that Appellant would have engaged another man to serve lunch for him and then sit in the park waiting for a dental appointment which was not until after the lunch period. In connection with the latter reason, it is of added significance that Appellant testified that he remained seated on the bench, by himself and for no particular reason, for at least ten minutes after he had served the purpose for which he had stopped in the park.

It is also claimed by Appellant that Mrs. Quinones stated that Appellant was not implicated despite Villanueva's testimony that he had told Mrs. Quinones that the "dope" she was to smuggle

ashore had been given to Villanueva by Appellant. The only evidence in the record as to what Mrs. Quinones said on this point is in the testimony of Agent DiLucia. He stated that Mrs. Quinones said she did not know Appellant; and that she did not implicate nor exonerate Appellant. All of her dealings on the ship were with Villanueva insofar as any heroin belonging to Appellant was involved. And insofar as the record discloses, Mrs. Quinones did not implicate anyone by name other than "Chico" although she did tell Officer DiLucia that "some other persons" were involved. It is perfectly plausible that Villanueva had mentioned Appellant's name as well as others to Mrs. Quinones and that she had forgotten them or failed to divulge them in anticipation of future transactions with these other persons if they were not arrested and imprisoned. Hence, these arguments are not supported by the record to any material degree.

Appellant's final contention is that he was tried and acquitted on a similar charge in the United States District Court for the District of Hawaii. Although it is persuasive in some cases, an acquittal in a Federal court on identical charges is not conclusive in these administrative proceedings. Nor is there any evidence in this record to establish that the charge of possession was identical by showing that the indictment or information in the Federal court action alleged possession of narcotics on 11 June, 1951, as alleged in the first specification under consideration herein. Probably such was not the case since Appellant was not arrested until 14 June, 1951, at which time he definitely did not have any narcotics on his person. Moreover, in a criminal trial it is necessary to have proof "beyond a reasonable doubt" in order to convict a man; while in these proceedings, it is only necessary that the decision of the Examiner be supported by "reliable, probative, and substantial evidence." In addition to the different standard of proof applied, it is also true that the rules as to the admissibility of evidence are not as stringent in these administrative proceedings as in the courts. There is hearsay evidence on material points contained in this record, which evidence would be incompetent in judicial proceedings but it will not invalidate this administrative order since it is corroborated and supported by other evidence.

It might well be that Appellant was acquitted in the Federal court because of the inadmissibility of such hearsay evidence or lack of proof of possession on 14 June, 1951. These would not be adequate reasons for reversing the Examiner's order especially since there is overwhelming circumstantial evidence tending to implicate Appellant in the conspiracy to smuggle the heroin ashore and it was specifically stated by the Investigating Officer that he would only stipulate that the person charged was acquitted in the Federal court on the charge of possession of narcotics. Hence, the acquittal relating to possession does not affect the Second Specification which alleges that Appellant conspired to smuggle narcotic drugs.

Any association with narcotics is considered to be such a serious offense that proof of the Second Specification alone would be sufficient to impose the order of revocation. But in view of the similarity between the testimony of Officer DiLucia and Villanueva on some points, it is reasonable to accept as reliable the latter's testimony dealing with Appellant's possession of the heroin aboard the ship. Therefore, in my opinion, there is reliable, probative and substantial evidence to support the allegations of possession of, as well as a conspiracy to smuggle, narcotic drugs.

ORDER

The order of the Examiner dated 2 October, 1951, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 16th day of April, 1952.