

In the Matter of Merchant Mariner's Document No. Z-979104-D1 and  
all other Seaman Documents

Issued to: CARLOS JUAN GONZALEZ

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1318

CARLOS JUAN GONZALEZ

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

By order dated 8 August 1960, 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 three specifications found proved allege that while serving as a utilityman on the United States SS SANTA BARBARA under authority of the document above described, on 21 November 1958, Appellant wrongfully possessed and used a narcotic drug, cocaine, while the ship was in the port of Callao, Peru; on 22 November 1958, Appellant wrongfully failed to join the SANTA BARBARA upon her departure from Callao.

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

The Investigating Officer in evidence documentary exhibits, including a record of Appellant's conviction in Lima, Peru as a result of the same acts on which the above two narcotics specifications are based, and a copy of a Vice Consul's memorandum on file in the United States Embassy at Lima, Peru. Both of these documents contain the seal of the consular office of the United States in Lima, Peru.

In defense, Appellant testified and also produced as witnesses the two seaman, Vega and Rivera, who were arrested with Appellant on 22 November 1958.

Appellant denied ever having used or possessed narcotic drugs. He also testified that he had never been ashore at Callao prior to 21 November 1958; on this date, he met a man named Robles, for the first time, at a bar in Callao; Robles went to his car and gave Appellant a small bottle of white powder to take as a present to a birthday party after Appellant promised to bring Robles two bottles

of whisky on the next trip; Robles did not tell Appellant anything about the contents of the bottle but testified at the court that it was cocaine; at the time, Appellant thought this was a joke and emptied the contents of the bottle on the ground; Appellant was drunk and did not remember what he did with the bottle but it was produced at the court trial; on the night of 21 November, narcotics were not used at the birthday party; after being arrested on the following day, Appellant was beaten until he confessed buying narcotics from Robles and using it at the party; Appellant told the U.S. Consul about this frame-up, the beating by the police, and that he put some of the white powder in the drinks at the party (the latter statement was retracted under pressure from counsel during the examination); Appellant was convicted on 13 August 1959 after pleading not guilty and telling his version of the matter to the court.

Both Vega and Rivera definitely testified that, when they were questioned by the police, they were not beaten when they denied having knowledge of any narcotics used at the birthday party. Vega testified that Appellant said he was beaten in order to obtain a confession about the narcotics; but Rivera testified that, although Appellant was crying after he was questioned, he said he told the police that he had no knowledge concerning the narcotics.

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

#### FINDINGS OF FACT

On 21 and 22 November 1958, Appellant was serving as a utilityman on the United States SS SANTA BARBARA and acting under authority of his document while the ship was in the port of Callao, Peru.

On 21 November, a wiper on the ship named Vega invited Appellant and Rivera, a wiper, to a birthday party at Lima which is a few miles inland from Callao. Appellant went ashore early in the evening on this date and visited various barrooms in Callao. He met a prior acquaintance named Robles at one of the bars and, after drinking together, they went outside to Robles' car and he sold Appellant a small bottle containing a white powder which was cocaine. Appellant had some more drinks and then went to the birthday party at a hotel in Lima. Two girls arrived and Appellant put some of the cocaine in the drinks during the course of the party. The girls left when the seamen refused to pay them to stay for the night. The three seamen returned to the ship between 6 and 7 o'clock in the morning.

Later in the morning, the local police came on board and arrested the three seamen on suspicion of using cocaine at the party in the hotel. Although a search of their quarters disclosed no evidence of narcotics, Appellant had a piece of paper with Robles' address and telephone number written on it. When questioned, Vega and Rivera denied having any knowledge concerning the use of narcotics at the party. Appellant admitted that he bought cocaine from Robles and used it at the party.

The SANTA BARBARA departed Callao on 22 November 1958.

A Vice Consul of the United States visited the seamen on 11 December 1958. They complained bitterly about the lack of sanitary facilities and proper food, but apparently Appellant did not tell the Vice Consul that his confession was obtained as a result of torture.

Vega and Rivera were released in April 1959. Appellant was tried before the Executive National Council which was a Private Court of Justice, composed of five members, created by a special law to deal with narcotics offenses. The trial was delayed because some of the other persons whose activities were under investigation were suspected of being involved with an international narcotics ring. All of them brought to trial, including Robles, were convicted but two others had not been captured. Appellant was represented by counsel, he pleaded not guilty, and was permitted to present his defense to the court that he did not know the substance obtained from Robles was cocaine. Appellant's denial of knowledge was rejected by the court and he was convicted on the basis of oral testimony, depositions, and documents introduced in evidence. On 13 August 1959, Appellant was sentenced to pay a fine and to be deported from Peru. He returned to the United States on 15 September 1959.

Appellant has no prior record.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the evidence of Appellant's conviction should have been limited to the fact of conviction for a particular offense. This foreign conviction constitutes merely a rebuttable presumption of guilt rather than a prima facie case and the presumption was overcome by Appellant's denial that he had ever used narcotics or that he had any knowledge that the substance was a narcotic.

The treatment of Appellant by the Peruvian authorities requires that the findings and conclusion rendered by those

authorities be disregarded.

There is no reliable, probative, and substantial evidence to show that Appellant possessed and used a narcotic drug. The documentary evidence of the Government is inferior in value to the live and consistent evidence presented by the Appellant.

It is concluded that the decision of the Examiner should be reversed and Appellant's document returned to him.

APPEARANCE:        Nicholas Atlas, Esquire, of  
                         New York City, of Counsel

#### OPINION

The contentions raised on appeal do not persuade me to alter the conclusion of the Examiner that there is reliable, probative, and substantial evidence contained in the record of this administrative hearing to support the finding that Appellant wrongfully, and therefore knowingly, possessed and used cocaine on 21 November 1958.

The record of Appellant's conviction was certified, and authenticated by a consular officer of the United States in accordance with 28 U.S. Code 1741. See Commandant's Appeal Decision No. 773. This evidence of conviction by a court of a foreign country is sufficient to make out a prima facie case of the matters adjudged and it is conclusive unless some persuasive reason is shown for impeaching it. Hilton V. Guyot (1895), U.S. 113, 228; Commandant's Appeal Decisions Nos. 998, 1154. Appellant's conviction by the Peruvian court depended upon the fact that the court did not believe Appellant was ignorant that it was actually cocaine he received from Robles.

The fact that there was cocaine in the bottle is established not only by the record of conviction but also by Appellant's testimony at the hearing that Robles testified to this effect at the court trial. Consequently, the outcome of this case depends upon the same subjective determination as did the decision of the court. The Examiner rejected Appellant's denials of knowledge of the nature of the substance primarily because his testimony disagrees in three important respects with the record of conviction and the memorandum of the Vice Consul who visited the three seamen on 11 December 1958 in jail. Both of these documents indicate that Appellant had met Robles before 21 November 1958 (corroborated by possession of his name and address by Appellant); Appellant took the cocaine to the party at the hotel and used some of it rather than pouring it on the ground near Robles' car; and that Appellant was not tortured to confess. With respect to the latter factor,

there is no indication in the memorandum of the Vice Consul of any such complaint although there were bitter complaints about other things. The record of conviction does not mention the alleged confession. In further rebuttal of this, both of Appellant's witnesses testified that they were not beaten or otherwise tortured when questioned about the narcotic.

Concerning the disposal of the cocaine, it seems unlikely that Appellant would have retained possession of the bottle (which he apparently did) if he had emptied its contents on the ground. Logically, he would have thrown both the bottle and the powder away at the same time. Also, it is of some related significance that during questioning by his counsel at the hearing, Appellant twice replied affirmatively when asked if he told the Consul (Vice Consul) that he put the powder (cocaine) in the drinks.

These are adequate reasons for rejecting Appellant's credibility and concluding that he took the cocaine to the party and used it knowing what it was. Otherwise, why would he have used it at the party? The answer to this is suggested by the Vice Consul's memorandum which states that Appellant said he was told by his friend Robles that it was an Aphrodisiac. But again this is contradicted by Appellant's testimony that he was not told anything by Robles about the contents of the bottle. This confusion in versions as to what Appellant knew about the contents of the bottle and what he did with the cocaine is not favorable to his claim of innocence.

Extravagant reference is made to the contention that Appellant was tortured by the police until he confessed. But even if this were true, there has been no connection established between the confession to the police and the conviction by the court. In his memorandum, the Vice Consul offered no objection to or criticism of the court procedure and the Consul certified that the acts of the person signing the record of conviction were due "faith and credit". Counsel for Appellant at the hearing complained that his letter to Appellant's counsel at the trial in Peru was not answered but no attempt was made to obtain his deposition.

No affirmative evidence has been produced which casts reflection upon the Peruvian court system as a whole or this court in particular. Although the Private Court of Justice to deal with narcotics offenses was created by a law published in 1949 under Manuel A. Odria, a president with absolute powers, this conviction occurred after free elections were held in 1956, in accordance with the country's Constitution of 1933, and the candidate Odria supported for the presidency was defeated by the direct popular vote in favor of Manuel Prado y Ugarteche who became president. (Facts officially noticed from Encyclopedia Britannica.)

Since the effect of Appellant's conviction as a prima facie case has not been refuted by proof that Appellant was not given a fair trial or by explanation of the possession of the cocaine to the satisfaction of the Examiner, the findings that the specifications alleging the wrongful possession and use of cocaine were proved will not be disturbed. See Commandant's Appeal Decisions Nos. 1165, 1178. The same is true with respect to the other specification since proof of the narcotics offenses is evidence that Appellant was detained and failed to join his ship as the result of his misconduct.

ORDER

The order of the Examiner dated at New York, New York, on 8 August 1960, is AFFIRMED.

E. J. Roland  
Admiral, United States Coast Guard  
Commandant

Signed at Washington, D.C., this 3rd day of July 1962.