

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT Z 465 78 5388
Issued to: John David Castleberry

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2187

John David Castleberry

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 13 April 1979, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as able seaman on board SS SANTA MARIANA under authority of the document above captioned, on or about 8 December 1978, Appellant wrongfully had in his possession at San Francisco, California, a quantity of cocaine.

The hearing was held at San Francisco, California, from 22 May to 15 June 1979.

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

The Investigating Officer introduced in evidence the testimony of three witnesses and certain documents.

In defense, Appellant offered in evidence his own testimony.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision was served on 14 August 1979. Appeal was timely filed and perfected.

FINDINGS OF FACT

On 8 December 1978, Appellant was serving as able seaman on board SS MARIANA and acting under authority of his document. SANTA MARIANA, returning from a foreign voyage, had first called at Los Angeles, California, and then proceeded to San Francisco where the

last passengers were landed and the shipping articles terminated. Routine customs search was being conducted of property brought ashore.

Appellant was observed by a Customs officer to be leaving the vessel along with other crewmembers, carrying two bags and a portable radio. Putting the possessions down on the ground, Appellant entered a telephone booth. The customs Officer approached the booth and asked Appellant for a declaration and also asked to check the luggage. Appellant assented.

While the bags were being examined Appellant reboarded the ship and then returned to the place of search. The Customs Officer had found in the bags two plastic packets containing white powder and a film canister containing similar powder. Arriving back, Appellant attempted to seize the canister from the officer.

Both field test and laboratory analysis proved the powder to be cocaine.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the search was unlawful and the evidence obtained therein should have been suppressed.

APPEARANCE: Jerrold M. Ladar, San Francisco, California, by Stephen M. Sommerhalter, Esq.

OPINION

Appellant's objection to the search is based on the fact that SANTA MARIANA had previously arrived in the United States at the port of Los Angeles, and he urges decisions which have held that a "border search," without probable cause or warrant, may not be legally conducted after entry into the United States has been completed, e.g., Almeido-Sanchez v. United States, 413 U.S. 266. Apart from the probability that the conditions of entry here may be distinguished from the cases following that cited decision, there is no doubt whatever that a search with consent is lawful, and such, clearly, is the instant case. See Decision on Appeal Nos. 1080 and 1790.

Further, it is recognized that even unlawfulness of a search does not bar the use of the product thereof in evidence in a remedial, non criminal, proceeding. See Decision on Appeal Nos. 1518 and 2135.

There was no error in the admission of the evidence in this

proceeding.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California, on 13 August 1979, is AFFIRMED.

R. H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 25th day of Feb 1980.

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