

# Admiralty Practicum

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**United States of America v. John Doe, A/K/A Rafael Segundo Crespo-Herrera, et. al. United States Court of Appeals, First Circuit, 27 October 1988 860 F.2d 488, cert. denied, 57 USLW 3722 (1989)**

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**Government may prove constructive "customs waters" jurisdiction by using hearsay exceptions to show such a foreign government's acquiescence in the Coast Guard's boarding of one of that country's ships on the high seas.**

**FACTS:** The defendants contend "that they were boarded by pirates, forced to take on perhaps eight million dollars worth of contraband [an estimated 250 bales of marijuana] and then abandoned by those scoundrels who yet, even in their absence, somehow compelled their victims to proceed on a forced journey." At least that's the way the First Circuit described the defense strategy. Predictably the jury rejected this version of the incident. More believably, the United States Coast Guard Cutter USS King intercepted and boarded the Honduran registered ship Captain Robert in international waters off the coast of Venezuela. On board the vessel the Coast Guardsmen found about 250 bales of marijuana and promptly arrested the eight crewmen on the vessel. Unable to tow the vessel back to port the Coast Guard preserved some of the evidence for trial and sank the Captain Robert at sea.

The eight prisoners were charged under 21 U.S.C. §955(c) (now part of 46 U.S.C. App. §1903) which makes it unlawful for anyone to be in the "customs waters" of the United States and "knowingly . . . possess with intent to distribute . . . a controlled substance."

"Customs waters" may be constructively extended to include international waters where the country of registry gives the United States permission to board its ships on a regular basis 19 U.S.C. §1401(j); *United States v. Molinares Charris*, 822 F.2d 1213, 1216-17 (1st Cir. 1987) or ad hoc *United States v. Robinson*, 843 F.2d 1, 2 (1st Cir. 1988); *United States v. Bent-Santana*, 774 F.2d 1545, 1549-50 (11th Cir. 1985).

All defendants were convicted at trial. Seven of the eight have appealed the conviction based on the theory that certain evidence allowed at trial violated hearsay rules. They contended that without this evidence the government would not have been able to prove that the constructive "customs waters" had been extended to include the Captain Robert.

**ISSUE:** Can the government prove by exceptions to the hearsay rule that it was given permission to board a foreign vessel thereby bringing that vessel constructively within the United States "customs waters" even though the exceptions are not enumerated in the federal rules of civil procedure?

**ANALYSIS:** The government relied on three pieces of evidence to prove the authorization by Honduras and subsequently its jurisdiction over the boarding of the Captain Robert.

I. The officer in charge of the USS King, officer Gibbons testified that he received oral permission through channels, government and diplomatic, from Honduras before he boarded the vessel. This was not contested or objected to at trial or on this appeal.

II. Two telexes from the Coast Guard Station in Miami saying that the station had received permission by telephone from the

Hondurans were admitted into evidence at the trial. This admission into evidence was attacked for two reasons. The defense claimed that the trial court erred because the government did not satisfy the pretrial notice requirement under the Federal Rules of Evidence, Rule 803 (24), and it was also inadmissible hearsay. The appeals court cites its flexible position under Rule 803 (24) in *Furtado v. Bishop*, 604 F.2d 80, 91-93 (1st Cir. 1979), cert denied 444 U.S. 1035 (1980) and decided that the trial court did not abuse its discretion. The court said the telexes only came to light because of the defense' cross-examination and the trial judge allowed defense counsel time to inspect the telexes, an opportunity to discuss problems with their introduction, or a continuance if needed. The defense did not note any problems or request a continuance.

The court also ruled that various enumerated exceptions to the hearsay rule would allow the telexes to be admitted into evidence under the federal rules and since one of the rules that the trial judge used to admit them was Rule 803 (24) it affirmed on that ground. Rule 803 (24) allows the trial judge to decide on a very trial-specific basis that a statement not enumerated in the rules may nevertheless still be admitted if the trial judge determines that several criteria are met. Provided that there are circumstantial guarantees of trustworthiness equivalent to those of the enumerated exceptions, the court may allow into evidence hearsay that (A) is a statement of a material fact, (B) is more probative than reasonable procurable alternatives and (C) serves the purpose of federal rules and the interests of justice. Of course, the proponent of the evidence is required to provide notice to his adversary, in certain detail, of his intention to offer the statement.

III. A certificate dated February 3, 1987 from the commander-in-chief of the Honduran navy, verifying that the Honduran government had given its permission to the United States Coast Guard to board the Captain Robert, was allowed into evidence. The appeals court noted, but did not comment on, the fact that the certificate said permission was granted the day after the ship was actually boarded. The defense argued that this certificate too was inadmissible hearsay. The court agreed with the trial judge that Rule 803 (24) would allow the certificate into evidence because it was most unlikely the government could have procured the attendance of such a high ranking Honduran official at the trial and this was the best way possible to prove the consent of the Honduran government. In any event, said the court, the defense never really claimed that the Honduran government did not approve the boarding.

Since the appeals court found all of the evidence challenged to be admissible, the jurisdiction based on the "customs waters" extension was proper.

George Plevretes '90

**SONY MAGNETIC PRODUCTS INC. v. MERIVIENTI O/Y**

United States Court of Appeals, Eleventh Circuit, 23 January 1989

863 F.2d 1537

**The ambiguous meaning of "package" under COGSA §1304(5), which limits liability to \$500 per package, will be construed to be equal to the number of actual cartons, not pallets, and not pieces, contained in a shipping container, as long as consistent with the act's purpose.**

**FACTS:** Plaintiff, Sony Magnetic Products, Inc. of America (Sony) contracted with Page and Jones (P & J), a freight forwarder, to have a container of video cassettes sent from Sony's plant in Dothan, Alabama, to England. P & J, through Gas and Equipment Transport Inc., reserved space for Sony's cargo with Atlantic Cargo Services on board the M/V Finnhawk. Merivienti, owner of M/V Finnhawk and Atlantic Cargo Services are the defendants-appellants.

The cassettes were packaged within a standard shipping container measuring forty feet long, eight feet wide and eight feet high. There were 1,320 cartons which were strapped onto fifty-two pallets within the container. As the container was being loaded the motor on the Finnhawk's deck crane catastrophically failed and the crane dropped the cassettes over sixty feet to the cement loading dock below, damaging the tapes.

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