

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Charles W. FUTCHER III (redacted)

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2464

Charles W. FUTCHER III

This appeal has been taken in accordance with 46 CFR Part 5, Subpart J. 46 CFR SS5.701.

By order dated 24 March 1986, an Administrative Law Judge of the United States Coast Guard at New York, New York, revoked Appellant's license and merchant mariner's document upon finding proved a charge of misconduct. The charge was supported by four specifications which alleged that Appellant, while serving as Pilot/Mate on board the M/V CAPE MAY, on or about 31 July 1985 wrongfully fraternized with a 14-year-old female passenger, wrongfully engaged in undue familiarity with a 14-year-old female passenger, wrongfully engaged in sexual intercourse with a 14-year-old female passenger, and wrongfully failed to exclude a 14-year-old female passenger from the pilot house and bridge of the vessel, as prohibited by 46 CFR 78.10-1.

The hearing was held at Philadelphia, Pennsylvania, on 11 December 1985, 5 February 1986 and 18 February 1986.

At the hearing Appellant was represented by professional counsel

and denied the charge and specifications.

In defense, Appellant introduced one exhibit and the testimony of three witnesses.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specifications had been proved. He determined that the first, second and third specifications were proved as one continuous series of acts, so as to be considered one action for the purpose of the order to be entered. The Administrative Law Judge then issued a written order revoking Appellant's license and merchant mariner's document.

The complete Decision and Order was served on 29 March 1986. Appeal was timely filed on 9 April 1986 and perfected on 22 December 1986.

FINDINGS OF FACT

On the night of 31 July 1985, the M/V CAPE MAY, passenger-and-vehicle-carrying ferry of 2119 gross tons, departed Cape May, New Jersey at 1902, bound for Lewes, Delaware. Appellant was employed aboard the vessel as Pilot, serving under the authority of his Coast Guard license. The weather at the time was inclement, with scattered showers. At about 2000, a female passenger, without authorization, entered the vessel's wheelhouse. At the time, her clothing was wet as the result of having been exposed to the weather. Present on the bridge were the Master of the CAPE MAY, the helmsman, and Appellant. After entering the wheelhouse, the passenger entered into a conversation with Appellant. After approximately two minutes, the passenger departed at the master's suggestion.

The vessel subsequently docked in Lewes, where it remained until 2046, when it departed for the return voyage to New Jersey. Shortly thereafter, the female passenger returned to the bridge and spoke to Appellant. About fifteen minutes after departure, when the vessel had passed Harbor of Refuge Light, Appellant requested and received permission to take a meal break. Appellant said he would be in the Owner's Room, immediately below the wheelhouse, and that he would return to the bridge if the weather worsened or the vessel slowed down. Appellant and the female passenger departed the bridge.

Appellant and the female passenger went to the Owner's Room, where they engaged in sexual intercourse.

Prior to the vessel's arrival at Cape May, a patrolman of the Delaware River and Bay Authority Police, who had observed Appellant and the female passenger in the Owner's Room, spoke to the passenger, who did not give her name, but said she was a sophomore attending high school in Atlantic City and that she was 14 years old.

Subsequently, an investigation into the alleged incident was conducted by Lt. Redman of the Delaware River and Bay Authority Police. Appellant gave a statement to Lt. Redman during this investigation.

BASIS OF APPEAL

Appellant challenges the finding of the Administrative Law Judge that the female passenger in question was 14 years of age, and argues that the sanction of revocation was inappropriate.

APPEARANCE: Jeffrey S. Moller, Esq.; Clark, Ladner, Fortenbaugh & Young; 1818 Market St.; Philadelphia, PA 19103

OPINION

Appellant contends that the "pivotal" finding of fact made by the Administrative Law Judge - the age of the female passenger - was clearly erroneous, since that finding was premised on "unsubstantiated hearsay."

The questioned evidence here consists of the conversation between the Delaware River Bay Authority patrolman and the female passenger. The passenger in question was not present at the hearing. According to the patrolman, the passenger told him she was a sophomore in high school and was 14 years of age. Appellant argues that this testimony was "textbook" hearsay, that the Coast Guard did not prove the passenger's age, and that "at most a consensual sexual act was entered into."

First, it should be noted that hearsay evidence is not inadmissible in suspension and revocation proceedings. Strict adherence to the rules of evidence observed in courts is not required.

See 46 CFR 5.537. Hearsay evidence may be admitted and used to support an ultimate conclusion, the only caveat being that the findings must not be based upon hearsay alone. Appeal Decision [2183 \(FAIRALL\)](#).

Appeal Decision [2404 \(McALLISTER\)](#).

Here, the Administrative Law Judge made a specific finding that the passenger in question was fourteen years old. The testimony of the patrolman that the girl was a sophomore in high school and was traveling with her parents was corroborated by Appellant's statements to Lt. Redman.

The central issue in this case, however, does not, as Appellant contends, concern the age of the passenger. Rather, the question is whether Appellant, while in a duty status, engaged in fraternization and sexual intercourse with a passenger. It was clearly proved at the hearing that he did. See Decision and Order at 15. Appellant urges that revocation was improper for such an act "entirely" on the initiative of the passenger. Appeal Brief at 14.

Such conduct alone, however, has been held to be sufficient grounds for revocation. In Appeal Decision [1508 \(WILLIS\)](#), the Commandant considered an appeal from the revocation of a document where the mariner involved had engaged in sexual intercourse with a passenger. In affirming the revocation order, the Commandant stated, "It would not be consistent with the obligation of promoting the safety of life and property at sea to permit a person of such moral laxness to continue to sail. . . ." While Appellant argues that Willis should be distinguished from the instant case, the cited principle remains the same. The very highest standard of care is placed on vessel officers for the personal safety of passengers and crew. Appeal Decision [2257 \(MALANAPHY\)](#).

CONCLUSION

Having reviewed the entire record and considered Appellant's arguments, I find that Appellant has not established sufficient cause to disturb the findings and conclusions of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge dated 24 March 1986, at New York, New York, is AFFIRMED.

Signed at Washington, D.C. this day of , 1987.

***** END OF DECISION NO. 2464 *****

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