

In the Matter of Motorboat Operator's License No. A-45928
Issued to: EDWARD H. TWIST

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

824

EDWARD H. TWIST

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.

By order dated 8 February 1954, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, revoked Motorboat Operator'S License No. A-45928 issued to Edward H. Twist upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Motorboat Operator on board the American M/B CAPTAIN THOMPSON under authority of the license above described, on or about 24 June 1953, while said vessel was at sea, he wrongfully attempted carnal knowledge of passenger Mary Papiano without her consent. The Examiner found that two related specifications were proved but he concluded that the other two specifications were merged within the above specification.

At the hearing, Appellant was given a full explanation of the nature of the proceedings 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 three members of the Wildwood, New Jersey, police force in addition to the testimony of Mrs. Mary C. Papiano. The Investigating Officer also placed in evidence a certified copy of the indictment, plea, conviction and sentence in the case of The State of New Jersey vs. Edward Hiram Twist. The latter case pertains to the same incident referred to in the above specification. the Investigating Officer then rested his case.

After counsel for Appellant made his opening statement, Appellant testified under oath and also offered in evidence the testimony of four other persons who were primarily character witnesses. Appellant stated that Mrs. Papiano became his guest on a private outing; Mrs. Papiano invited Appellant's attentions by her dress as well as by her display of affection towards Appellant; Appellant's attempt to have sexual relations with Mrs. Papiano was encouraged by her; and Appellant did not injure Mrs. Papiano or do anything without her consent.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions and having considered the written arguments submitted, the Examiner announced his findings and concluded that the charge had been proved by proof of the three specifications. He then entered the order revoking Appellant's Motorboat Operator's License No. A-45928.

From that order, this appeal has been taken, and it is urged that the decision of the Examiner is contrary to the weight of the evidence; it was not proved that Mary Papiano was a passenger; and the decision should be reversed, as a matter of law, since Mary Papiano was not a passenger.

APPEARANCES: Nathaniel Rogovoy, Esquire, of Millville, New Jersey of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 24 June 1953, Appellant was serving as Motorboat Operator on board the American M/B CAPTAIN THOMPSON and acting under authority of his Motorboat Operator's License No. A-45928 while said motorboat was navigating with Mrs. Mary C. Papiano on board in the capacity of a passenger for hire.

At about 0830 on 24 June 1953, Mrs. Papiano, age 25, went to the Ship Ahoy Dock, Wildwood, New Jersey, where the CAPTAIN THOMPSON and other party boats for hire were moored. Mrs. Papiano was dressed in shorts, halter, blouse, jacket, underpants and sandals. Mrs Papiano told Appellant, age 52, that she wanted to go fishing and he told her to get on board. Mrs. Papiano understood that she was to pay Appellant at the end of the trip. After waiting for a party of eight which did not appear, Appellant dismissed the bait boy and told Mrs. Papiano that he would take her flounder fishing.

On the way out of the harbor, Appellant stopped at another dock and bought a bottle of gin after Mrs. Papiano had mentioned that she drank gin. They conversed on subjects of a personal nature while proceeding to sea. The motorboat navigated to a point about a half mile off Cape May, New Jersey, where they began fishing and drinking gin.

After a short time, Appellant was encouraged in making intimate advances towards Mrs. Papiano. During a tussle on the deck, Mrs. Papiano either jumped or fell overboard and swam around in the water till Appellant helped her get back in the boat. At some time before going in the water, Mrs. Papiano had removed her jacket, blouse, sandals and wrist watch. When Appellant then indicated that he desired to have sexual intercourse with her, Mrs. Papiano permitted him to kiss her and then she grabbed a life ring and jumped overboard. Shortly after she was again assisted in getting into the boat, Appellant induced Mrs. Papiano to lie down on the bunk with him and he unsuccessfully attempted to have sexual intercourse with her. Mrs. Papiano rejected this attempt but tried to appease Appellant by other sensual means. Mrs. Papiano did not remove any more of her clothing during this time.

The CAPTAIN THOMPSON returned to the dock at about 1630 and Mrs. Papiano went to the home of a friend where she was visiting.

At approximately 1940, Mrs. Papiano reported her version of the above events to the police authorities at Wildwood, New Jersey. On his plea of nolo contendere to the charge of assault with intent to commit rape, Appellant was convicted before the New Jersey Superior Court of Cape May County. On 28 October 1953, Appellant received a suspended sentence of six months imprisonment and was fined \$1000.

There is no record of prior disciplinary action having been taken against Appellant by the U. S. Coast Guard.

OPINION

The jurisdictional question has been raised as to whether Mrs. Papiano was Appellant's private guest on the motorboat or whether she was a passenger for hire. If Mrs. Papiano was in the latter category, there is no doubt that Appellant was acting under the authority of his motorboat operator's license since it is required by law that a motorboat carrying passengers for hire shall be operated by a person licensed by the Coast Guard for such service; 46 U.S. C. 526f. In either case, Appellant was acting under authority of his license if he was not the owner of the motorboat. (The record is not clear as to who owned the boat.) This is true because Appellant would not have been employed to operate the boat to carry passengers for hire unless he was properly licensed to do so.

Even if Appellant were the owner of the motorboat, it is my opinion that he was acting under authority of his license on the trip in question. Appellant was at his usual place of business for the purpose of accepting passengers for hire to go fishing (and waiting for a party of eight such persons) when Mrs. Papiano, a complete stranger to Appellant, boarded the boat with the intention of paying Appellant in order to go fishing in the capacity of a passenger. There is nothing in the record to show that this relationship between the two persons was severed by a subsequent understanding by both parties that Mrs. Papiano was Appellant's personal guest. Therefore, I conclude that Mrs. Papiano remained a passenger for hire and it follows that Appellant was necessarily acting under the authority of his license. It is an unimportant technicality that Mrs. Papiano did not pay Appellant at the end of the trip because of the events which transpired during the trip.

On the merits of the case, there is substantial evidence to support the allegation that Appellant attempted to have carnal knowledge of Mrs. Papiano without her consent. Mrs Papiano's testimony to this effect is corroborated by the testimony of the three members of the Wildwood, New Jersey, police force who interrogated Appellant after Mrs. Papiano reported the incident. The pertinent portions of the testimony of these three men concerns admission which they claim Appellant made at the time of the interrogation. In addition, there is the record of Appellant's conviction as a result of this incident.

Despite the proof of the allegations, it is my opinion that very strong mitigating circumstances are presented by Mrs. Papiano's testimony at the hearing in which she admitted that, at times actively and at other times passively, she participated in arousing Appellant's sexual interest. Mrs. Papiano's scanty attire, her willingness to go out alone with Appellant, and her conversation during the beginning of the trip may all have led Appellant to misunderstand Mrs. Papiano's desires in this situation.

Under all the circumstances, the following modification of the order or revocation imposed by the Examiner seems to be appropriate.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 8 February 1954 is modified to provide that Motorboat Operator's License No.1 A-4592, issued to Appellant by the United States Coast Guard, is suspended for a period of six (6) months.

As so MODIFIED, said order is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 25th day of July, 1955.

***** END OF DECISION NO. 824 *****

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