

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No. 584350 and MERCHANT MARINER'S DOCUMENT No.
221-56-6855

Issued to: Charles W. FUTCHER III

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2426

Charles W. FUTCHER III

This appeal has been taken in accordance with 46 CFR 5.707.

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.

On 3 April 1986, Appellant filed a notice of appeal and requested a temporary document pending appeal. The Administrative Law Judge denied the request by order dated 7 April 1986.

BASES OF APPEAL

This appeal has been taken from the denial of a temporary document. Appellant urges that the administrative Law Judge erred in finding the specifications proved and in revoking Appellant's license and document. Appellant contends further that he should be issued a temporary license because he cannot be presumed to be a hazard to the navigation of any vessel.

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

OPINION

A request for a temporary document is governed by the provisions of 46 CFR 5.707 (c), which provides:

(c) A determination as to the request will

take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws. If one of the offenses enumerated in §5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant. A temporary document or license may be denied for that reason alone.

Among the offenses "enumerated in §5.61(a)" is "rape or sexual molestation." 46 CFR 5.61(A)(3). In this case, the Administrative Law Judge considered Appellant's request in light of the required considerations and concluded that Appellant's acts were "within the interdiction of 46 CFR 5.61 (a)(3)." He then denied the application. While the specifications were not drawn in terms of rape or sexual molestation, I find no abuse of discretion in the Administrative Law Judge's determination that sexual intercourse with a 14-year-old female passenger falls within the ambit of rape or sexual molestation. (The elements of statutory rape are merely sexual intercourse with a female under statutory age of consent. 65 Am. Jur. 2d, Rape, §16. The Administrative Law Judge cites a state statute (Delaware Criminal Code, Section 762) indicating that in Delaware, a female less than 16 years old is below the age of consent. See also 18 USC 2032 (Carnal knowledge of female under 16).) There is nothing in the record before me on this interlocutory appeal which rebuts the presumption set forth in 46 CFR 5.707 (c) (cited above).

CONCLUSION

Appellant has not established sufficient cause to disturb the order of the Administrative Law Judge denying him a temporary license and document.

ORDER

The order of the Administrative Law Judge denying Appellant a temporary document dated at New York, New York, on 7 April 1986 is AFFIRMED.

J.C. IRWIN
Vice Admiral, U.S. Coast Guard
ACTING COMMANDANT

Signed at Washington, D.C. this 21 day of July 1986.