Lauren Kenyon

915488332

PHIL 455 – Sex and the Law

Brief Final

December 1, 2014

Table of Contents

1. Statement of Issue
2. Introduction
3. Case Facts
4. Case History
5. Prosecution and Defendant Arguments
6. Conclusion
7. Table of Accredited Cites
8. Statement of Issue

In recent years, particularly in our current generation of young adults, irresponsible alcohol consumption has shed light on a major issue: consent to sex while under the influence. The question being called to attention is whether or not a person can consent to sexual activity while under the influence of alcohol, and if not, does this constitute rape? There are two decisions the court has the option of making: (1) Yes, a person can consent even while under the influence, or (2) No, a person does not have the ability to give consent while under the influence.

If it is the case that the court decides a person has the ability to consent while under the influence, this has to be the standard for all cases. In fact, this standing would prove it very difficult for victims of rape to receive the justice they deserve.

In the case that the court decides a person does not have the ability to consent while under the influence, there must be some standard regarding the level of blood alcohol concentration at which a person can no longer consent. Once that level is determined the court must then determine whether or not this constitutes rape.

1. Introduction

The following case examines two twenty-one year old adults who participated in sexual activity after having consumed alcohol, John Doe and Jan Doe. In this situation, the male is claiming he did not give consent to the sexual activities. The female, is stating otherwise, thus claiming defense. The court must decide if there is sufficient evidence to convict the female of rape.

This case must be viewed at with great scrutiny because of the issues that have been stated in the previous section. The decision in this case will be crucial to future cases of this nature, and thus must be looked at carefully. Essentially this case be will be the determining factor as to if the court will establish a level of blood alcohol content at which a person can no longer give consent to sex.

1. Case Facts

On the night of November 1, 2014, two adults, John Doe and Jane Doe, partook in the consumption of alcoholic beverages. Both parties are of age twenty one, the legal age to drink. According to witnesses, both parties were out at a local bar and partaking in the consumption of alcohol on their free will. Both parties were buying their own drinks from the bar, and seemed to be making the conscious decision to consume the alcohol. Due to the amount of drinks that were had by each party, and the respective weights of each party, both must have had blood alcohol content levels somewhere between 0.8 and 2.0. At the end of the night the two were seen leaving together. According to John Doe, he woke up the next morning in Johnson’s home. When confronted, Jane Doe admitted to the two having sex. John Doe claims that he never gave consent and is now pursuing charges of rape against Jane Done. Jane Doe claims the defense that Doe did in fact give consent. We must now determine if we can convict Jane Doe of rape.

Evidence for this case includes bodily fluids found in the condom used on the night of the sexual acts. Those fluids are a positive DNA match with both parties, confirming that sexual activity between the two did occur. There were several empty alcohol bottles in the defendant’s home which also have matching DNA found on the saliva on the bottles. Finally, there were several witnesses who saw the two voluntarily consuming alcohol at the bar, as well as the two leave together.

1. Case History

In the previous 2007 case of R v Bree, a man and a woman were in a very similar situation to the case that is currently be examined. In R v Bree the defendant was a male who was accused of rape by the female. R v Bree came to the following conclusion: “If, through drink (or for any other reason) the complainant has temporarily lost her capacity to choose whether to have intercourse on the relevant occasion, she is not consenting… However, where the complainant has voluntarily consumed even substantial quantities of alcohol, but nevertheless remains capable of choosing whether or not to have intercourse, and in drink agrees to do so, this would not be rape.” Essentially the court decided that consuming alcohol alone is not a good enough argument to convict someone of rape. The person claiming rape, must have been intoxicated enough to no longer be able to consent.

According to this case there is a need to establish a level of blood alcohol content at which we can legally deem a person unable to consent to sex. However, it also means that we have to have a standard way of proving that the person involved was at or beyond that level. Doing so means a necessity for much more concrete evidence; evidence other than simply witnesses.

In the 2005 Case of R v Dougal, a woman engaged in sexual activity with a security guard while intoxicated, and claimed rape. According to findings in this case, the woman has no recollection of giving consent, nor any recollection of refusing sex. Based on these facts, the court ruled that there was simply not enough evidence to convict the man of rape. This case sets a precedent for our current case as it further exemplifies that fact that hearsay as well as a lack of evidence is not enough to convict someone of rape.

1. Prosecution vs Defense Arguments

Defense:

Due to the fact that we do not know the actual blood alcohol content level of each party, we cannot possibly know whether or not the defendant was intoxicated to a point beyond the ability to consent. It is very possible the defendant does not remember consent, but to say that this is enough reason to convict someone of rape is well beyond a far stretch.

According to our justice system, a person should only be convicted of a crime when the evidence against him or her can be proven beyond all reasonable doubt. In cases such as these, eye witness testimony tells us little to nothing about the reality of situation. Unless we have factual evidence, such as the actual level of blood alcohol content, or the exact number of alcoholic beverages and their alcohol percentages, we cannot know if a person had gotten to a point where he or she could no longer give consent to sex.

Prosecution:

The prosecution seems to be arguing that we cannot simply dismiss cases of rape. In doing so we are leaving victims of rape feeling as though they are helpless because the standard for prosecution is so high. While this a valid argument, and while the defense agrees that we should not allow rapists to run free, we have to look at the morality of the justice system as a whole. One of the main goals we have established is to lock away on the deserving. By convicting people based on almost inconclusive evidence, we are opening the door to a potential influx of incarcerating people who truly do not deserve it. We cannot allow this to happen.

1. Conclusion

Though there is an apparent need to establish a legal level of blood alcohol content at which a person can no longer consent to sex, it is hard to do so because of the factual evidence needed to prove this. We can make a standard, but how will we be able to use it without implementing a very extensive process to prevent sexual activity while under the influence. It happens far too often to regulate. Though we want justice for rape victims, we simply do not have the means to prove rape in these circumstances, and thus can only convict when there is concrete evidence available to the court.

1. Table of Accredited Cites

R v Bree [2007] EWCA Crim 804, [2007] 2 Cr App R 13.

* “If, through drink (or for any other reason) the complainant has temporarily lost her capacity to choose whether to have intercourse on the relevant occasion, she is not consenting… However, where the complainant has voluntarily consumed even substantial quantities of alcohol, but nevertheless remains capable of choosing whether or not to have intercourse, and in drink agrees to do so, this would not be rape.”

R v Dougal R unreported, November 2005, Swansea Crown Court. [2007] EWCA Crim804, [2007] 2 Cr App R 1.

* Defendant had sex with a security guard when intoxicated and claimed rape, but later revealed that she did not remember saying no. The man was not convicted of rape.

R vSheehan [2007] EWCA Crim804, [2007] 2 Cr App R 13.

* A man lights another man on fire while intoxicated and uses the defense of intoxication, but the jury rules that this is not a valid excuse. This can be used to show that intoxication does not excuse criminal action.