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Sex and the Law

December 18, 2014

Appellate Brief Final

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**California Penal Code**

261. (a) Rape is an act of sexual intercourse accomplished with a

person not the spouse of the perpetrator, under any of the following

circumstances:

(1) Where a person is incapable, because of a mental disorder or

developmental or physical disability, of giving legal consent, and

this is known or reasonably should be known to the person committing

the act. Notwithstanding the existence of a conservatorship pursuant

to the provisions of the Lanterman-Petris-Short Act (Part 1

(commencing with Section 5000) of Division 5 of the Welfare and

Institutions Code), the prosecuting attorney shall prove, as an

element of the crime, that a mental disorder or developmental or

physical disability rendered the alleged victim incapable of giving

consent.

(2) Where it is accomplished against a person's will by means of

force, violence, duress, menace, or fear of immediate and unlawful

bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating

or anesthetic substance, or any controlled substance, and this

condition was known, or reasonably should have been known by the

accused.

(4) Where a person is at the time unconscious of the nature of the

act, and this is known to the accused. As used in this paragraph,

"unconscious of the nature of the act" means incapable of resisting

because the victim meets any one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act

occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the

essential characteristics of the act due to the perpetrator's fraud

in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the

essential characteristics of the act due to the perpetrator's

fraudulent representation that the sexual penetration served a

professional purpose when it served no professional purpose.

(5) Where a person submits under the belief that the person

committing the act is someone known to the victim other than the

accused, and this belief is induced by any artifice, pretense, or

concealment practiced by the accused, with intent to induce the

belief.

(6) Where the act is accomplished against the victim's will by

threatening to retaliate in the future against the victim or any

other person, and there is a reasonable possibility that the

perpetrator will execute the threat. As used in this paragraph,

"threatening to retaliate" means a threat to kidnap or falsely

imprison, or to inflict extreme pain, serious bodily injury, or

death.

(7) Where the act is accomplished against the victim's will by

threatening to use the authority of a public official to incarcerate,

arrest, or deport the victim or another, and the victim has a

reasonable belief that the perpetrator is a public official. As used

in this paragraph, "public official" means a person employed by a

governmental agency who has the authority, as part of that position,

to incarcerate, arrest, or deport another. The perpetrator does not

actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied

threat of force, violence, danger, or retribution sufficient to

coerce a reasonable person of ordinary susceptibilities to perform an

act which otherwise would not have been performed, or acquiesce in

an act to which one otherwise would not have submitted. The total

circumstances, including the age of the victim, and his or her

relationship to the defendant, are factors to consider in appraising

the existence of duress.

(c) As used in this section, "menace" means any threat,

declaration, or act which shows an intention to inflict an injury

upon another.

**Facts of the Case**

In order to convict the defendant of rape they would have to of met the criteria of the definition. In this case there is no sufficient evidence that would prove that rape had ever occurred on the night of November 1, 2014.

John doe and Jane doe met at a bar the night of November 1, 2014. The two were at a bar 21+ both had enough drink (.08-2.0) not blacked-out. Guy claims rape after having sex. The girl says its consensual. Both agree they had sex. She takes him home in a taxi. There are bodily fluids, empty alcohol bottles & witness who saw them leave together.

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 the bottles. Finally, there were several witnesses who saw the two voluntarily consuming alcohol at the bar, as well as the two leave together. There is no proof or evidence in this case that shows that anything defined as rape occurred.

**Case History**

The Smith v California rape trial is similar to this case in that they met at a bar and went home together. Smith successfully argued that consent was given before sexual intercourse occurred. The prosecutor argued that she had been raped that night by Smith. No sufficient evidence was brought forward, therefore Smith was not convicted.   
 In the Hicks v New York case, Taylor Hicks was convicted of multiple rapes. The police sketch that they had looked so much like Tyrone Hicks that his own parents turned him in.  A victim identified him, and Tyrone was convicted and served 10 years in prison.  Even after his release, he was determined to prove his innocence, and with the help of New York Law School Post-Conviction Innocence Clinic, he has done so.  DNA testing has demonstrated Tyrone is innocent.

**Main Argument**

In this case there is no sufficient evidence that would prove that rape had ever occurred on the night of November 1, 2014.

Both parties could easily be convicted of the same crime because there is no proof that states whether or not either one of them committed the crime of rape. The defendant was clearly under the impression that sexual intercourse was desired by both parties and there is no fact that would state otherwise.

In criminal law, crimes have both a physical and mental element to them. The mental portion is called mens rea and it is the person's awareness of the fact that his or her conduct is criminal. Nowhere in this case does mens rea occur because the defendant had no criminal intent to commit any crime. Word of mouth, “he said, she said“, is not enough to convict anyone of rape.

**Rebuttal/Conclusion**

The prosecutors in this case are arguing for the defense of John Doe who claims to have been raped. They believe that he was raped on the night of November 1, 2014 by Jane Doe. They believe the evidence is enough to make a conviction and that not convicting would be not protecting the victim. The standard of prosecution is unreasonably high.

However there is a standard that needs to be beyond reasonable doubt. The risk of incarcerating the innocent is too high to make any convictions at this point. Like previous cases have shown, it is easy to convict the innocent based on lack of evidence or false evidence. In the case of John Doe and Jane Doe the evidence is not sufficient to incarcerate.