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Sex & the Law

Legal Argument

Rape is a crime in this country that sadly occurs on a daily basis. The way that our country deals with that problem is of course, by having a court of law uphold the laws that we have in regards to rape. When you look at the situation that way, you could assume that cases dealing with rape would be swift, and breeze through the legal process and prosecute the person in question for their crimes. All you’d need was someone to accuse someone else and then that person would be prosecuted. But it is never that simple. One of the biggest and most important questions that comes into play when a rape case reaches court is the question of consent. In other words, did both people agree to have sexual intercourse? This is the single most important question that needs to be answered because without a “yes” then according to our law someone was raped. Physical consent occurs also, and it can be argued in a court of law that it means just the same. If you are physically engaging in an act with someone, and not opposing it in any way, I think it is safe to say that you have given consent. As long as there is not a “No” or physical opposition, then everything is okay.

Rape often occurs, or is accused of having occurred during a time of intoxication. When alcohol is involved with sex, it blurs the lines of consent. Many times someone claims rape after a night of intoxicated sex that they don’t remember. Sex and intoxication makes things really complicated. Many things come into play when the two are mixed with each other. Alcohol and sex is a dangerous mixture of elements. It causes many a dilemma like pregnancy, depression, STD’s, and even rape. One important thing is the level of intoxication of the individuals. The legal percentage of alcohol intoxication is .08 in the entire country. Anything higher than that makes you legally intoxicated, and while your mindset may be impaired, you are held completely responsible for your actions when you have consumed alcohol. This was something that was enacted during State V. Brown. That’s what makes sexual intercourse and intoxication such a slippery slope. There needs to be more prevalent information available to people about the consequences of drinking, because it can make you do something you regret, but by the time you get to the point where you wish you hadn’t done anything, it’s most likely too late.

Everyone’s tolerance for alcohol is completely different. Two shots of tequila can get one person really drunk, while it may take eight or even nine shots to get someone else intoxicated. That completely debunks the claim that many make during a time when they are being prosecuted for rape; that the accuser only had a few drinks. One element to a rape case can be how one person has had something to drink while the other has not. This would obviously seem like the person not drinking is taking advantage or even baiting the other individual into having sex by continually giving them drinks. In which case that person might consent to having sex with the other, but their mindset was intentionally impaired and it begs the question on whether or not they were raped on purpose or not. These are just a few reasons why sex and intoxication is a really hard thing to sort out. But these are not the elements of the case in question. What occurred in this case is that drinking was had on both sides. Meaning that both are accountable for their own actions.

The bottom line is this: If two people are intoxicated and they both consent, it isn’t rape. You can take your words back all you want, but in the moment, if you consent, then whatever happens is on you. All other scenarios aside. It’s the only question that really matters once everything else is burned down. Intoxication blurs things, but consent means everything.

This particular case that is being taken to court is between Jane Doe and Jon Doe. The story begins at night at a bar, where the two flirted with each other all night. They both consumed excessive amounts of alcohol. They were both seen leaving the bar happily with each other. They take a taxi where the taxi driver sees them together. They go to the woman’s house and enjoy a private evening of fornication. Upon waking up, the man claims that he did not consent to the woman. The Jane swears that John consented and that she did not rape him. Both individuals agree that sex did indeed occur between them, but the John Doe says that he never consented, while Jane said that while he said no, his actions did during sexual intercourse spoke for him. Legal precedence’s for this type of case tend to rule in the favor of the accuser. If you accuse someone of rape, it really does boil down to a contest of he said, she said. In State V. Brown (Aug 1995), Brown was convicted of second degree rape, even though he claimed that he blacked out due to his level of intoxication during the accused event. He was still held accountable for his actions whether he remembered them or not. Whether that was his sober thought’s intent or not, he did what he did and his actions are what caused him to be in the situation that he found himself. There are laws against drinking for a reason. It’s well known how it makes people act, and if you bypass that common knowledge, and choose to drink anyway, the responsibility of whatever you do ultimately falls on your shoulders.

California Penal code 261.1 states that rape is accomplished when “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.” The accuser of rape is a healthy male for his age. His only problem being that he was heavily intoxicated to the point where his judgment may have been skewed. But that is completely his own fault, and no one else’s. And it cannot be legally argued that he was raped when he, in his own free will chose to take in the level of alcohol that a he did. For instance, someone could accuse someone else of raping them simply because they regret their actions from the previous night, and even though the sex was known to be consensual, that person could go back on their word and state that they were forced. Many would argue that John was too intoxicated to be able to consent, but its known what alcohol does to someone, and all the possibilities need to be weighed before the consumption of alcohol. John is solely responsible for what happened. In the United States vs. Clark (1992), while alcohol was not involved, it explores the rules of consent in a legal manner. Sergeant Clark imposed himself sexually upon a new female private. Completely disregarding her verbal opposition to his actions. The accuser in our case showed no sign of opposition, and he agreed to the action taking place. This is not rape. This sounds like someone regretting their evening after the fact. Furthermore California Penal code 261.4b states that rape occurs when a person “Was not aware, knowing, perceiving or cognizant that the act occurred.” This was not the case for the man accusing my client. While he was intoxicated. He was fully aware of his surroundings and he consented to having sexual intercourse. He was cognizant, aware, and knowing that the act was occurring. Penal code 261.4b alone provides enough legal evidence to debunk the prosecutors claim.

A rebuttal on the side of the accuser side of the argument would state how different levels of alcohol could have been the factor to the confusion of consent. While that may be true, there is no evidence to prove that Jane did not drink as much as John. And there is no way to prove whose tolerance for alcohol is higher. The law states that you are responsible for what you do while you are under the influence. When people drive while intoxicated, and kill someone because of their impairment that they imposed upon themselves, you never see anyone not getting penalized for that. So why should this case be different? John chose to drink, most likely knowing the way he is while intoxicated, and then consented to sex under the influence. Jane is not at fault here. She consented as well while intoxicated, but she woke up fine about it. John realized that he made a mistake, and tried to pull a one eighty on Jane. Plus the numerous verbal evidence from witnesses of the two of them. They were seen to be enjoying each other’s company by everyone who they came into contact with that night. They will try pull the card on how everyone claims that men can’t be raped. In doing so, they’ll attempt to sway the jury to their side on making them feel bad for the male who never gets his rape accusations heard. It will most likely sway a few, but what they don’t seem to realize is that whatever they argue, however intricate their case notes are on the matter, they are going up against the law. And there is nothing they can do to get what they believe to be justice for John. The California penal code 261 alone is enough to shut their case down. Not to mention the numerous cases amounted to show how the person who is intoxicated never gets off. None of what they say matters at all when it’s going against the law and legal precedence.

Furthermore, a lack of evidence on their side will not impress the judge or jury. They’ll only have guilt tripping, and meaningless evidence to try to sway people onto their side.

Because of the history of the way these cases go, and the particular circumstance that this case falls into, it will take a lot of effort to ensure Jane gets prosecuted. John has no evidence that he said no, other than his word. Which honestly means nothing in court. And because they both agree to have been drinking, and that they did have sex, why would anyone think twice about him saying no? It will definitely be a hard thing to prove in court. There is no physical, or recorded evidence. There are no witnesses that can testify that they heard him oppose the sex. They were in the privacy of an apartment, so once again, it really boils down to a battle of what either person said were to be true. And at this point, there isn’t enough refutable evidence to prove that the Jane raped John, or that he did not consent.

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