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Legal Argument Draft

Philosophy 455

Final Draft Legal Brief

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## California Penal Code

California defines rape as: [California Penal Code Section 261 PC](http://www.losangelescriminallawyer.pro/lawyer-attorney-1354905.html)

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.

(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.

(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.

# Facts of the Case

Kim Kardashian and Bill Cosby both go out drinking at the same bar. Bill Cosby and Kim Kardashian are seen together at the bar drinking. Both parties consumed the same amount of alcohol, thus both equally as intoxicated. Kim Kardashian and Bill Cosby decided together to leave the bar. Shortly after leaving the bar, the two hail a taxi cab and return to Kim Kardashian’s house where the two partook in sexual intercourse. Witness accounts and victim/defendant testimonies verify all the above evidence.

# Trial Court

In a California Trial Court the Jury and Judge found the defendant Kim Kardashian guilty of raping Bill Cosby in her home. Bill Cosby claimed to have never given consent to Kim Kardashian to engage in sexual intercourse with him. Based off this testimony the jury decided that the defendant should be deemed guilty of her crime.

# Statement of Conclusion

The California Penal Code defines rape under a wide range of parameters.

1. If the victim has a physical or mental disorder enabling them to give consent and is known by the accused
   1. In this case neither the victim nor defendant was diagnosed or presented having a physical or mental disability rendering them incapable of consenting
2. If the accused strikes fear, uses physically force, or uses violence to force the victim to have sexual intercourse
   1. In this case both parties were equally as intoxicated. No evidence presented forceful sex. There were no medical reports insinuating that the victim or the defendant sustained bodily harm. Since both parties were equally intoxicated, and no medical reports or signs or physical damage were presents, and Kim Kardashian is physically smaller than Bill Cosby; it is very unlikely that the defendant force the victim to have sex with her.
3. If a person is unable to consistent due to intoxication or any anesthetic substance intake
   1. In this case both parties were equally as intoxicated. Both reported having the same amount of alcohol. Although alcoholic tolerances are a factor here, both parties consuming the same amount of drinks put both parties on an equal BAC level. Therefore it is unlikely that one of them was unable to consent while the other was able to. It is also unlikely that the able bodied party was able to take advantage of the party that was unable to consent being just as drunk as he was.
4. If the person is unconscious during the time of the act and the other parties knows this has taken place.
   1. In this case both parties reported being conscious throughout the sexual act.
5. If the person committing rape has tricked the victim into believing that he/her is someone else.
   1. In this case both parties met at the bar and no illusion of another person was put on by the defendant. The two parties both knew who each other were for the brief period of introduction and leaving the bar together.
6. If the person committing the rape threatens future violence or oppressive action to the victim.
   1. In this case the defendant never made futuristic treats towards the victim, treating oppression or bodily harm. Both party’s testimonies prove this.
7. If the person committing the rape threatens the victim using threats related to public office powers, such as incarceration, arrest, or deportation.
   1. The defendant never threated the victim using powers of public office and had no substantial backing (i.e is a cop, public office holder, etc.) to persuade the victim to think otherwise.

# Support: Intent

Based on this review of the California Penal code the defendant is not guilty of rape on any of the seven parameters. The case presents a lack of evidence and therefore the trial court was wrong to proceed with the conviction of the defendant. The defendant never had any intention of committing sexual intercourse against the victims will. The defendant as reviewed above was just as intoxicated and just as consensual as the victim was leading up to the event. Both parties agreed to drink together, leave the bar together, get in the cap together, and go back to the defendant’s house together. Nowhere along this line was the defendant ever led to believe that the victim was uncomfortable with situation that was brewing, nor did the victim ever explicitly claim that they didn’t want to proceed to have sex. My client can’t be proven of rape based on the California Penal Code definition.

Federally a defendant is innocent until proven guilty. This right is protected by the Universal Declaration of Human Rights proposed by the UN in 1948. The U.S being a key contributor to creation of this universal right, today commonly accepts this right as a U.S citizen’s right. It is up to the prosecution to provide proof to convict the defendant of accused criminal activity. In this case the prosecution as reviewed above lacks enough evidence to definitively say whether or not the defendant should be convicted.

# Support: Legal Precedent

THE PEOPLE, Respondent, v. RAYMOND VILLA, Appellant

Court of Appeal of California, First Appellate District, Division One

In the People v. Raymond Appeals Court Case Raymond Villa was acquitted of his rape charges on the account that the victim’s testimony suggested that the sexual intercourse that occurred between the two parties was indeed consented to. The victim’s testimony didn’t supply convincing enough evidence to definitively prove rape. This is the case in Kim Kardashian and Bill Cosby incident. Bill Cosby didn’t provide enough convincing evidence in his testimony to suggest rape had occurred.

# Rebuttal / Conclusion

-The defendant did not violate the CA penal code 261 on any of the parameters set for this penal code by the state of California.

-The defendant was under the impression throughout the course of the night that the victim had consented to sexual intercourse and at no time was the defendant informed or let known that that previously given consent was detracted.

-The defendant is therefore innocent of committed rape and her universal declaration of human rights were violated in the sense that she was not innocent until proven guilty seeing as she was never factually proven guilty.

-Lack of evidence and poor testimonies render the defendant innocent

Reference List

1. People v. Reilly

The People of the State of New York, Plaintiff, v. James A. Reilly, Jr., Defendant

85 Misc. 2d 702; 381 N.Y.S.2d 732; 1976 N.Y. Misc. LEXIS 2045. LexisNexis Academic.

1. State of North Carolina v. Mitchell

State of North Carolina v. Herman Mitchell Court of Appeals of North Carolina

6 N.C. App. 534; 170 S.E.2d 355; 1969 N.C. App. LEXIS 1222. LexisNexis Academic. State v. Rudy

1. State of Ohio v. Rudy

The State of Ohio, Appellee, v. Rudy, Appellant Court of Appeals of Ohio, Ninth Appellate District, Summit County

13 New Crim. L. R. 665. Retrieved from [www.lexisnexis.com/hottopics/lnacademic](http://www.lexisnexis.com/hottopics/lnacademic)

2010 University of California Criminal Law review pertaining to the consent age being raised in Canada for various sexual harassments and endangering. Statutorily rape cases and online luring of minors were the topics most frequently discussed in this review.

117 Harv. L. Rev. 2341. Retrieved from [www.lexisnexis.com/hottopics/lnacademic](http://www.lexisnexis.com/hottopics/lnacademic)

2004 Harvard Law Review Association reviewed the California case The People v. Ray. This case discusses what should be interpreted when a women gives her consent. How far does the extent of a women’s consent go? Are there multiple sexual acts each requiring an individual consent? (e.g Does a women need to provide consent for oral and sexual intercourse or is one “yes” enough?)

39 U. Balt. L.F. 114. Retrieved from [www.lexisnexis.com/hottopics/lnacademic](http://www.lexisnexis.com/hottopics/lnacademic)

The University of Baltimore Law forum discusses the State v. Baby case, in which the court oversaw an argument for women to be able to withdraw consent after penetration has begun. If the partner refuses to stop or continues the sexual act after the withdraw of consent, then this partner will be charged with rape.