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Final Paper

Philosophy , Monday 7pm

Alcohol & Sex; According to the Law

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# 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.

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.

# Trial Court Hearing

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

# 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.

# 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.

Bill Cosby and Kim Kardashian are seen together at a bar drinking. Both parties are seen consuming the same amount of alcohol; same intoxication level. Kim Kardashian and Bill Cosby decide to leave the bar together. They call for a taxi and head over to Kim Kardashian’s place. All of the above is verified by witnesses and evidence found.

# Statement of Conclusion

California defines rape as an act of sexual intercourse with someone who you are not married to, and where the other person is: incapable of giving legal consent; against a person will by means of force, duress, violence, menace or fear; where a person is unable to resist; and other instances (CAL. PEN. CODE § 261).

The facts of this case are clear that at one point both individuals gave consent to sex; the issue at hand is whether John Doe, after consuming alcohol to the point of intoxication, withdrew his consent to have sex with Jane Doe or was intoxicated to the point that his previous consent to sex with null and void.

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.

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.

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.

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.

The defense is requesting the court to dismiss this case on the basis of:

1. John Doe consented to have sex with Jane Doe before indulging in alcohol at the bar.
2. John Doe never explicitly, nor implicitly withdrew his previous consent to sex.
3. John Doe never rejected Jane Doe’s advances for sex nor is there any evidence claiming he attempted to reject Jane Doe’s advances.
4. Jane Doe acted under the presumption that John Doe was willing to have sexual relations with her after mutually drinking at the bar and mutually leaving in a taxi to go to a private place to have sex.
5. 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.

In this case, neither of the two parties were identified as having any mental physical disabilities that would render their ability to consent

1. 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.

In this case, Bill Cosby agreed to further engagement after the bars and decided to enter the suspect’s house for more drinks. In no way shape or form was Cosby actually forced to do anything.

1. 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.

In this case, both parties have had too much to drink, but it is known that Cosby gave consent in the beginning and there was no indication of whether or not he withdrew later on that evening.

1. In the event that one person was unconscious, asleep, was not aware of or able to process the events of that night, it is rape.

In this case, both parties had prior arrangements to engage in sexual intercourse and eventually went through with the deed.

1. 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.

In this case, both parties they had just met that night, met up and decided to take things further. Kim Kardashian had no intent to rape, commit, or harm Bill Cosby; she was only trying to have a good time.

1. 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.

Both parties consented to having sex and both parties were seen fine and unharmed.

1. 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.

No violence, intimidation, or force was used to bring Bill Cosby into the Kardashian residence. He had given his consent to enter the residence by riding home and getting out of the taxi with her. She or he do not hold any political power or hold power in public offices.

# Support

## Support: Intent

California Penal Code 261 defines rape as nonconsensual sexual intercourse with someone who is not your married partner while the individual is unable to consent due to various reasons, is against the individuals will, is incapable of resisting, is unconscious, is unaware that they are having sex, or in some way, shape or form unable to understand, resist, or consent to the sexual act.

None of the above applies to sexual act(s) that occurred between John Doe and Jane Doe. On the contrary, both able-minded adults enjoyed time at the bar, left together in a taxi, and consented to have sex long before drinking and arriving at their final destination.

The intent of the law is to punish individuals who have committed specific and insidious crimes against others by taking advantage of them sexually. It is clear by the facts of this case that Jane Doe, in fact, did not take advantage of John Doe. Jane Doe, in fact, was just as drunk as John Doe; thus, if John Doe was too intoxicated to consent to sex with Jane Doe,, then its more plausible that Jane Doe was too intoxicated to rape John Doe.

Based on all seven measures of rape, the defendant should be found innocent. Both parties agreed to enter the taxi together, as well as the Kardashian residence. In no way shape or form did the defendant put the “victim” under any duress and no intimidation was used. Both of these adults aren’t diagnosed with mental or any physical disability. There is lack of duress and violence that has been identified in this case. Although alcohol was found to be prevalent in this case, both parties were seen to have ingested the same amount at the bars, thus indicating alcohol levels to be nearly the same. This may not take into account the tolerance levels of either parties, but witnesses show the two to be in the same state leaving the bar. The defendant gladly let Mr. Cosby leave in the morning, being assured that they both had a good night together.

## 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 Jane Doe and John Doe incident. John Doe didn’t provide enough convincing evidence in his testimony to suggest rape had occurred.

In State v. Brown, 899 P.2d 34 (Wash. Ct. App. 1995), the court convicted James K. Brown for raping a woman by sticking his fingers in her vagina and putting his mouth on her vagina while she was sleeping. In this case, at no time did the woman give consent. James K. Brown testified that he was drunk when this occurred, and has no recollection of the events that transpired.

This case is clear and distinct, and clearly shows the facts needed for a conviction: the victim was sleeping and did not consent. John Doe, on the other hand, consented to sexual relations with Jane Doe before, and during their night of partying and drinking and at no time indicated that he was withdrawing his consent to sex.

In addition, the level of intoxication whereby a person loses the ability to consent to sex has not been clearly defined in any court of law. However, we can use California Penal Code § 647 as a proxy. Penal Code 647 states that a person can be convicted of being ‘Drunk in Public’ if they are unable to exercise care for their safety or the safety of others or are interfering with, obstructing, or preventing others from using streets, sidewalks, or other public ways.

While John Doe and Jane Doe were publicly drinking at the bar, publicly waiting on a cab outside of the bar, publicly getting in the cab to go their next destination, and publicly leaving the cab to walk to their destination, no police authorities were called to arrest the pair. If John Doe could conduct himself according to the law with such grace, how possibly could he be too intoxicated to consent to sex?

In the William Kenny Smith v California rape trial in 1991, Mr. Smith was acquitted sexual assault. The case is representative of John Doe v Jane Doe in that Both events occurred after meeting someone at a bar, drinking, and leaving for another destination for further partying. Smith was accused of raping the women, but Smith successfully argued that the woman consented to sex.

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.

In the People V. Raymond, he was acquitted of all his rape charges as the court was unable to prove that the two parties had sex unconsented. Bill Cosby brings insufficient evidence for rape. According to rape laws, Bill Cosby was indeed not raped.

## Support Policy

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: Tradition

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. Support: Policy

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.

# Rebuttal

In conclusion to this argument, Kim Kardashian is indeed innocent of all rape charges and should not be found guilty. According to Penal Code 261, no crime of rape or sexual assault was actually committed. Bill Cosby agreed and consented to Kim Kardashian’s invitation. He drank at the bar with her, hailed and took the taxi home with her, entered her complex for further drinking and the two had sex. So, at which point did Mr. Cosby agree not to have sex or accept Kardashian’s arrangements?

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.

The Prosecution has no factual standing to claim that Jane Doe raped John Doe. It is clear that John Doe consented to have sex with Jane Doe. In fact, the entire night was based on John Doe consenting to:

* Partying with Jane Doe at the bar.
* Drinking with Jane Doe at the bar.
* Consenting to leaving the bar with Jane Doe
* Consenting to getting into a cab with Jane Doe
* Consenting to leave the cab with Jane Doe
* Consenting to enter into a private residence with Jane Doe

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.

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.

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.

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.

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.

# Reference List

1. People v. Reilly

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

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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

3. 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

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

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

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.