

A state statute provides: "A person commits the crime of rape if he has sexual intercourse with a female, not his wife, without her consent." Mistake as to consent is an affirmative defense in this jurisdiction.

A man was charged with the rape of a woman. At trial, the woman testified to facts sufficient for a jury to find that the man had sexual intercourse with her, that she did not consent, and that the two were not married. The man testified in his own defense that he believed that the woman had consented to sexual intercourse and that she was his common-law wife.

At the conclusion of the case, the court instructed the jury that in order to find the man guilty of rape, it must find beyond a reasonable doubt that he had sexual intercourse with the woman without her consent.

The court also instructed the jury that it should find the man not guilty if it found either that the woman was the man's wife or that the man reasonably believed that she had consented to the sexual intercourse. The court placed the burden of persuasion as to these issues on the man.

The jury found the man guilty, and he appealed, contending that the court's instructions on the issues of whether the woman was his wife and whether he reasonably believed she had consented to sexual intercourse violated his constitutional rights.

Were the man's constitutional rights violated by the trial court's jury instructions?

- A. No, his rights were not violated by either part of the instructions.
- B. Yes, his rights were violated by the instruction as to whether the woman was his wife, but not by the instruction on belief as to consent.
- C. Yes, his rights were violated by the instruction on belief as to consent, but not by the instruction as to whether the woman was his wife.
- D. Yes, his rights were violated by the instructions as to both issues.

Explanation:

Criminal defenses: burdens & standards of proof

Negation defense	Challenges element of crime (eg, alibi, lack of intent) Fifth Amendment assigns burden to prosecution to prove element beyond a reasonable doubt
Affirmative defense	Justifies or excuses criminal conduct, but does not challenge element of crime (eg, entrapment, self-defense, duress) Statute assigns burden (prosecution or defense) & standard of proof (eg, preponderance, clear & convincing, beyond a reasonable doubt)

The due process clause of the Fourteenth Amendment (applicable to the states) requires that the **prosecution prove every element** of a criminal offense **beyond a reasonable doubt**. In this jurisdiction, rape requires proof of three elements: (1) a man and a woman had sex, (2) the woman did not consent, and (3) they were not married.

At the conclusion of the man's trial, the court instructed the jury that it could convict the man of rape if it found beyond a reasonable doubt that (1) the man and the woman had sex and (2) she did not consent. However, the court's jury instruction placed the burden of proof for the third element (marriage) on the man—not the prosecution. Therefore, the instruction as to whether the woman was the man's wife violated due process (**Choices A & C**).

In contrast, due process does not apply to **affirmative defenses** because these defenses do not challenge the elements of the criminal offense—they merely justify or excuse a defendant's criminal conduct. Therefore, the defendant can bear the burden to prove an affirmative defense under any **evidentiary standard**.

Here, the court instructed the jury that it could find the man not guilty if he proved that he reasonably believed that the woman had consented to sex (ie, mistaken consent). Mistaken consent is an affirmative defense since it does not negate an element of rape, but rather excuses the man's conduct. Therefore, the instruction on the man's belief as to consent properly placed the burden of proof on the man and did not violate due process (**Choices C & D**).

Educational objective:

While due process requires that the prosecution prove every element of a crime beyond a reasonable doubt, a defendant can bear the burden to prove an affirmative defense by any evidentiary standard.

References

U.S. Const. amend. XIV § 1 (due process clause).

In re Winship, 397 U.S. 358, 364 (1970) (holding that the prosecution must prove every element of crime beyond a reasonable doubt).

Patterson v. New York, 432 U.S. 197, 210 (1977) (explaining that the state may place the burden of proof on the defendant to establish an affirmative defense).

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