

A man and a woman went out on a date. At the end of the date, they went to the woman's apartment for a drink. As the night progressed, the man and the woman became amorous. The man suggested that they move into the woman's bedroom, and the two went into her dark bedroom and began to be sexually intimate. Unbeknownst to the man, the woman had a rare health condition that caused her to faint if her heart rate got too high. Prior to having intercourse, but before the woman gave her consent, the woman fainted. The man did not realize that the woman had fainted and, honestly believing that her lack of resistance indicated her consent, began having intercourse with her. A few moments later, the woman regained consciousness. When she realized what had happened, she reported the man to the police. The man was later arrested and charged with rape.

Is the man guilty of rape?

- A. No, because he did not have the specific intent to commit rape.
- B. No, because he reasonably believed that the woman had consented to intercourse.
- C. Yes, because a mistake of fact regarding the victim's consent is not a defense to rape.
- D. Yes, because he had intercourse with the woman without her consent.

Explanation:

In most modern jurisdictions, **rape** is sexual intercourse with another without that person's consent.* Rape is a **general intent crime**, which means that the defendant must consciously perform the unlawful act (**Choice A**). **Mistake of fact is a defense** to rape (and other general intent crimes) if the defendant's **honest, reasonable, but mistaken belief** negated the requisite mental state. For rape, this means that the mistake must have negated the intent to engage in nonconsensual sexual intercourse with the victim.

Here, the woman fainted due to a health condition, leaving her unable to consent to sexual intercourse. However, the man honestly but mistakenly believed that the woman's lack of resistance indicated her consent. That mistake was likely reasonable because (1) the woman had voluntarily accompanied the man to the dark bedroom where they became intimate and (2) the man was unaware of the woman's health condition. Due to this mistake of fact, the man is not guilty of rape (**Choices C & D**).

*At common law, rape was defined as (1) unlawful sexual intercourse (2) with a female who is not the defendant's wife (3) against her will by force or threat of force.

Educational objective:

Rape is a general intent crime. As a result, mistake of fact is a defense if the defendant's honest, reasonable, but mistaken belief negated the intent to engage in nonconsensual sexual intercourse with the victim.

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Applicability of mistake-of-fact defense



