

Rape

In this file there are four rape directions;

- 1, Rape - issue of consent;
- 2, Rape – issues of consent/capacity/alcohol;
- 3, Rape - Did he do it? No issue of consent; and
- 4, Rape - accepted there was rape but not by defendant.

1, Rape (issue of consent)

A man is guilty of the offence of rape if

- (a) he intentionally penetrates a woman's vagina, anus or mouth with his penis. (There is no need for the prosecution to prove that he actually ejaculated inside her vagina. The penetration does not have to be deep. Any degree of penetration, however slight, will do.);
- (b) at the time when he penetrated her, she did not consent to the penetration; and
- (c) at that time he did not reasonably believe that she was consenting.

The Defendant agrees that he penetrated C**'s vagina when having sexual intercourse with her, but he says she consented and that he believed that she consented.

So, the two issues for you to decide are whether or not C** consented to sexual intercourse, and, if she did not, whether or not at the time the defendant reasonably believed that she consented.

consent

"consent" means "agree".

A woman consents to sexual intercourse only if she agrees by choice and has the freedom and capacity to make that choice. Mere submission by C** to something that she did not want to happen does not amount to consent.

In deciding whether C** really consented, or whether she merely submitted to something that she did not want, you should apply your combined good sense, experience and knowledge of human nature and modern behaviour to all the relevant facts.

The law does not require a complainant to have resisted physically, nor is it necessary to show that a woman's submission was induced by force or fear – although in this case the prosecution evidence is that C** did physically resist and that D** overpowered her by the use of both force and threats.

at the time the defendant did not reasonably believe that she consented

This raises two issues. Did the defendant, actually, honestly believe or might he honestly have believed that C** consented? Secondly, would a reasonable man, knowing what the defendant knew, have believed that she consented?

The prosecution must satisfy you that the defendant did not believe that C** was consenting, or that any belief on his part that she was consenting was not a reasonable belief.

What matters here is the defendant's belief at the time that he had sexual intercourse, when he put his penis inside C**. A man may hold a reasonable belief that a woman is going to consent to sex beforehand, but if she then makes it clear that she does not want to have sexual intercourse, and he knows that she is not consenting, but continues to have sex regardless, he is guilty of rape.

A man who does not think about whether or not a woman is consenting – either because he does not care or his mind is affected by drugs – does not honestly believe that she is consenting.

If you decide that the defendant did believe or may have believed that C** was consenting, and you are considering whether that belief was reasonable, you should take into account all the circumstances including any steps which the defendant took to ascertain whether or not she consented.

Relationship

D** says that he was in a relationship with Mrs C**. That, by itself, is not a defence to a charge of rape. A husband may be guilty of raping his wife if, on a particular occasion, she does not agree to sex and he does not reasonably believe that she is consenting. A boyfriend may be guilty of raping his girl friend if, on a particular occasion, she does not agree to sex and he does not reasonably believe that she is consenting. Although the question of whether or not there was a relationship between C** and D** is an important issue in this case, when considering each count on the indictment, you should concentrate on whether, at that particular time, C** agreed to have sex and whether D** reasonably believed that she was consenting.

So, the key questions for you to answer separately in relation to each count, having regard to all the evidence and the directions which I give you are these

At the time when D** placed his penis inside C**, did she consent, or might she have consented to sexual intercourse?

At the time when he placed his penis inside her, did he reasonably believe or might he reasonably have believed that she consented?

If you are sure that the answers to both questions are “no”, the defendant is guilty of the count which you are considering. If the answer to either question may be “yes”, he is not guilty.

2, Rape (issues of consent/capacity/alcohol)

A man is guilty of the offence of rape if

(a) he intentionally penetrates a woman's vagina with his penis. (There is no need for the prosecution to prove that he actually ejaculated inside her vagina. The penetration does not have to be deep. Any degree of penetration, however slight, will do.);

(b) at the time when he penetrated her, she did not consent to the penetration;
and

(c) at that time he did not reasonably believe that she was consenting.

D** agrees that he penetrated C**'s vagina when having sexual intercourse with her, but he says she consented and that he believed that she consented.

So, the two issues for you to decide are whether or not C** consented to sexual intercourse, and, if she did not, whether or not at the time D** reasonably believed that she consented.

consent

"consent" means "agree".

A woman consents to sexual intercourse only if she agrees by choice and has the freedom and capacity to make that choice. Mere submission by C** to something that she did not want to happen does not amount to consent.

In this case, "capacity" is important. A woman who is so drunk that she lacks the ability to make choices and decisions is, as a matter of law, unable to consent. A very drunk woman may lose the capacity or ability to consent long before she becomes unconscious.

If a woman is asleep or otherwise unconscious, she is to be taken not to have consented unless sufficient evidence is adduced to raise an issue as to whether she consented.

At its simplest, a woman who is asleep in a drunken slumber, when sexual intercourse begins cannot, at that stage, consent to it.

In deciding whether C** really consented, or whether she merely submitted to something that she did not want, you should apply your combined good sense, experience and knowledge of human nature and modern behaviour to all the relevant facts.

The law does not require a complainant to have resisted physically, nor is it necessary to show that a woman's submission was induced by force or fear – although in this case the prosecution evidence is that C** did physically resist, so far as she was able to do so by pushing backwards, using the bedroom wall.

at the time the defendant did not reasonably believe that she consented

This raises two issues. Did D**, actually, honestly believe or might he honestly have believed that C** consented? Secondly, would a reasonable man, knowing what the defendant knew, have believed that she consented?

The prosecution must satisfy you that D** did not believe that Ms Bulley was consenting, or that any belief on his part that she was consenting was not a reasonable belief.

What matters here is the defendant's belief at the time that he had sexual intercourse, when he put his penis inside C**. A man may hold a reasonable belief that a woman is going to consent to sex beforehand, (e.g. if they have earlier been flirting together) but if she then makes it clear that she does not want to have sexual intercourse, or it is clear that she has lost the capacity to consent, and he knows that she is not consenting, but continues to have sex regardless, he is guilty of rape.

A man who does not think about whether or not a woman is consenting – either because he does not care or his mind is affected by drink or drugs – does not honestly believe that she is consenting.

Similarly, a man who knows that a woman is so drunk that she lacks the ability to make choices and decisions cannot, as a matter of law, hold a reasonable belief that she is consenting.

Likewise, if a woman is asleep or otherwise unconscious, the man is to be taken as not having a reasonable belief that she consented unless sufficient evidence is adduced to raise an issue as to whether he believed that she consented. At its simplest, if a man knows that a woman is sleeping through sexual intercourse in a drunken slumber, without knowing that sexual intercourse takes place, cannot hold a reasonable belief that she is consenting to sexual intercourse.

If you decide that the defendant did believe or may have believed that Sabrina Bulley was consenting, and you are considering whether that belief was reasonable, you should take into account all the circumstances including any steps which the defendant took to ascertain whether or not she consented.

So, the key questions for you to answer separately in relation to Count *, having regard to all the evidence and the directions which I give you are these

At the time when D** placed his penis inside C**, did she consent, or might she have consented to sexual intercourse?

At that time, did he reasonably believe or might he reasonably have believed that she consented?

If you are sure that the answers to both questions are “no”, the defendant is guilty of Count *.

If the answer to either question may be “yes”, he is not guilty of Count *.

3, Rape (Did he do it? No issue of consent)

A man is guilty of rape if

- he intentionally penetrates a woman's vagina, anus or mouth with his penis. There is no need for the prosecution to prove that he actually ejaculated. The penetration does not have to be deep. Any degree of penetration, however slight, will do;

- at the time when he penetrated her, she did not consent to the penetration; and
- at that time he did not reasonably believe that she was consenting.

“consent” means “agree”.

The defendant has not said that C** was consenting or that he believed that she was consenting. He simply denies that there was any sexual activity.

In any event, as a matter of law, if, as D** admits he did by pleading guilty to assault occasioning actual bodily harm, a man uses violence against a woman at the time of penetration, she is to be taken as not having consented and the defendant is to be taken as not having reasonably believed that she consented.

The prosecution case is that **after punching C** in the face and threatening her, D** put his penis in her mouth. If you are sure that is what happened, the defendant is guilty of rape.

The defendant denies this. As I have said, he says there was no sexual activity. If what he says may be true, he is not guilty.

**In this case, in view of the defendant’s guilty plea to the offence of assault occasioning actual bodily harm, issues of consent and belief in consent do not arise.

So, in relation to Count *, the key question for you to answer, having regard to all the evidence and the directions which I give you is this

Did the defendant place his penis inside C**’s mouth?

If you are sure that the answer is “yes”, he is guilty of rape.
If the answer may be “no”, he is not guilty of rape.

4, Rape (accepted there was rape, but not by defendant)

A man is guilty of the offence of rape if

(a) he intentionally penetrates a woman’s vagina with his penis. (There is no need for the prosecution to prove that he actually ejaculated inside her vagina, although in this case they say that D** did ejaculate when he raped C**. The penetration does not have to be deep. Any degree of penetration, however slight, will do.);

(b) at the time when he penetrated her, she did not consent to the penetration; and

(c) at that time he did not reasonably believe that she was consenting.

In this case the defence agree that there was a rape.

The defence agree that C** was raped by someone.

D** however denies that he was the rapist.

So, what you have to do is to decide whether or not D** was that man.

In view of that issues of consent and belief in consent do not arise in this case.

The prosecution rely on the description of the rapist given by C**
P** says that description is supported by the fact that semen with D**'s DNA was found on the high vaginal swab taken from C**.

The defendant denies that he raped C**. He says that at the time of the rape he was asleep at home.

So, the key question for you to answer, having regard to all the evidence and the directions which I give you is this

Was D**the man who raped C**?

If you are sure that the answer is "yes", the defendant is guilty of rape. If the answer may be "no", he is not guilty.