

Sexual assault

This file contains two directions relating to sexual assault;

- 1, Did the defendant do it?; and
- 2, Was the touching sexual?

Sexual assault (Did the defendant do it?)

D** would be guilty of sexual assault if:

- he intentionally touched C**, and
- the circumstances were that the touching was sexual, and
- C** did not consent to the touching, and
- he did not reasonably believe that she consented.

“Touching” includes touching clothing.

Touching is “sexual” if a reasonable person would consider that either

- whatever its circumstances or the defendant’s purpose in relation to it, it is because of its nature sexual; or
- because of its nature, it may be sexual and because of its circumstances or the purpose of the defendant, it was sexual.

The prosecution case is that, D**. No one has suggested that, if it happened, what she described is anything other than “sexual touching”. The defendant has not suggested that C** consented to being touched, or that he reasonably believed that she consented. He simply denies that there was any sexual touching.

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

Did D**?

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

Sexual assault (Was it sexual?)

A defendant is guilty of sexual assault if:

- he intentionally touched the complainant, and
- the circumstances were that the touching was sexual, and
- the complainant did not consent to the touching, and
- he did not reasonably believe that she consented.

“Touching” includes touching clothing.

Touching is “sexual” if a reasonable person would consider that either

- whatever its circumstances or the defendant’s purpose in relation to it, it is because of its nature sexual; or

- because of its nature, it may be sexual and because of its circumstances or the purpose of the defendant, it was sexual.

The prosecution case is that, D**. He accepts that he did that. The defendant has not suggested that C** consented to being touched, or that he reasonably believed that she consented. He simply denies that the touching was of a sexual nature.

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

Was the touching sexual?

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