

MEMORANDUM

TO: Atty. Jill Young, Senior Partner

FROM: Jason R. Spearman

DATE: November 18, 2010

RE: Charges of rape brought against Mr. Al Mun Joy

Issue

In the state of North Carolina, can consent be withdrawn before the act of sexual intercourse? If so, is the resulting intercourse criminal rape? Can consent be withdrawn during intercourse? How will the Rape Shield Law come into play?

Brief Answer

In North Carolina, Al Mun Joy did not commit the crime of rape. Yes, consent may be withdrawn before the commission of sexual intercourse, however it may not be withdrawn during the act of sexual intercourse. The Rape Shield Law will apply to this case.

Facts

Over three months ago, Mr. Al Mun Joy was charged with rape after his girlfriend of five months, Ms. Itsa Knoo called police. Mr. Joy, admitted to police that he and Ms. Knoo had sex, but that sex was consensual. Mr. Joy states that Ms. Knoo did say yes at first, prior to intercourse but then said no during the same act of intercourse. He then continued the act of intercourse after Ms. Knoo's alleged revocation of consent. Mr. Joy claims he did not hear Ms. Knoo's revocation. Mr. Joy also states that he knew Ms. Knoo was promiscuous during their relationship. Mr. Joy was 28 years old and Ms. Knoo was 25 years old at the time of the alleged rape.

Discussion

The North Carolina rape statute § 14-27.3 provides that;

- (a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:
 - (1) By force and against the will of the other person; or
 - (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.
- (b) Any person who commits the offense defined in this section is guilty of a Class C felony.

However this statute will only apply if the victim withdrew consent before penetration of the vagina. State v. Way (297 N.C. 293) states that if [intercourse begins] with the victim's consent, no rape has occurred though the victim later withdraws consent during the same act of intercourse. An example of this case being used is State v. Sombo, where prosecutors dropped rape charges against the accused after it was found that the victim did give consent during the same act of intercourse.

Also, according to N.C.G.S. 8C-412 (b);

- (b) Notwithstanding any other provision of law, the sexual behavior of the complainant is irrelevant to any issue in the prosecution unless such behavior:
 - (1) Was between the complainant and the defendant; or
 - (2) Is evidence of specific instances of sexual behavior offered for the purpose of showing that the act or acts charged were not committed by the defendant; or
 - (3) Is evidence of a pattern of sexual behavior so distinctive and so closely resembling the defendant's version of the alleged encounter with the complainant as to tend to prove that such complainant consented to the act or acts charged or behaved in such a manner as to lead the defendant reasonably to believe that the complainant consented; or
 - (4) Is evidence of sexual behavior offered as the basis of expert psychological or psychiatric opinion that the complainant fantasized or invented the act or acts charged.
- (c) Sexual behavior otherwise admissible under this rule may not be proved by reputation or opinion.

This statute being the Rape Shield Law will bar the defense from showing the past promiscuity of the victim in her past relationships.

Conclusion

The facts and law show that Mr. Joy did not commit the criminal offense of rape. Because consent was given prior to intercourse, the law provides that consent cannot be withdrawn during the same act of intercourse. The Rape Shield Law will not allow the past sexual behavior of Ms. Knoo to be introduced in trial unless the prior behavior occurred between Ms. Knoo and Mr. Joy. Mr. Joy's continued intercourse with Ms. Knoo after her revocation of consent is not considered rape in the State of North Carolina.