

Horror only starts with the crime Women charging rape face long odds in court Series: RAPE & THE LAW/ Are the cards stacked against the victims?

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ABSTRACT (ABSTRACT)

Clouding the issue even further are cases where the defendant and victim knew each other or had some kind of previous relationship. Of this year's 71 reported rape victims, police records show, 45 said they knew their attackers. Last year, police recorded 108 rapes; 67 of the victims knew their attackers.

Society's attitudes toward rape are reflected in juries; each member, [Bonnie Welsh] says, arrives in court with his or her own opinion of how a rape victim should act or what she should look like.

COLOR PHOTO PHOTO; Donny Brown is serving five life terms in the state penitentiary in Jessup for raping five Pasadena women in the mid-'70s. Reporter Kris Antonelli, who writes that Brown attacked women because he wanted to be in control, examines rape and how the legal system deals with it in today's four-piece series, "Rape & the Law." Police Sgt. Bonnie Welsh says juries don't understand the psychology behind rape: "It's not about sex, it's about power, anger and humiliation."; Credit: THE ANNE ARUNDEL COUNTY SUN -- GARO LACHINIAN THE ANNE ARUNDEL COUNTY SUN -- ALGERINA PERNA

FULL TEXT

When Theresa walked into Circuit Court on Feb. 4, 1989, she didn't look like the victim of a violent crime.

And that weighed against her.

She had no bruises on her face or broken bones to show the jury. No one witnessed the crime she says occurred in her home during the early morning hours of April 21, 1988.

There were no fingerprints or bloodstains for investigators to analyze. It was her word against her ex-boyfriend's. Plus, she had to prove her actions did not contribute to the assault.

The charge was rape. The jury, after a five-day trial, found her ex-boyfriend innocent, accepting his claim that the sex they had was consensual.

Theresa's situation is not unusual, prosecutors and police say. Rape -- for a number of reasons -- is extremely difficult to prove.

A review of 26 first-degree rape cases filed in Anne Arundel County Circuit Court last year show that only five defendants were found guilty. The remaining cases resulted in lesser convictions, acquittals or dropped charges.

Of 27 second-degree rape cases prosecuted, six resulted in convictions, one defendant was found not guilty and eight cases were dropped. The remaining cases resulted in convictions on lesser charges.

The numbers for 1989 show much the same pattern.

What makes rape so difficult to prove?

Start with the lack of physical evidence, says county police Sgt. Bonnie Welsh, who has spent 12 years investigating sex crimes and now teaches at the county police academy.

Plus, juries don't understand the psychology behind rape. "They still think it's a sex crime," Welsh says. "It's not about sex, it's about power, anger and humiliation."

Every rape case boils down to two inseparable issues: consent and force. Juries often evaluate how badly the woman was injured to determine the level of force used in the attack. If she has visible injuries, this line of thinking goes, then she must have not wanted to have sex.

And that, prosecutors say -- the fact that victims must prove they didn't ask to be hurt -- is unique to the crime of rape.

"If we have a stabbing victim," Assistant State's Attorney Cynthia Ferris says, "we don't have her up there saying she didn't want to be stabbed."

Clouding the issue even further are cases where the defendant and victim knew each other or had some kind of previous relationship. Of this year's 71 reported rape victims, police records show, 45 said they knew their attackers. Last year, police recorded 108 rapes; 67 of the victims knew their attackers.

"We get a lot of date rape cases," county police Sgt. Robert Jaschik says. "I guess they figure they know each other and it's all right.

"The victims are getting a lot younger," he adds, saying 11-, 12- and 13-year-olds are coming to police. "Most of the time, {the attacker} is a friend of a friend" -- a boy from the junior high school or a neighborhood youth.

Rape or persuasion?

What exactly constitutes resistance? As for the attacker, what is a reasonable level of physical or implied force -- that is, what separates rape from persuasion? What proves that a woman in a given situation agreed to have sex with the defendant?

Legal experts agree there are no easy answers, no way of telling how a jury of men and woman -- who may very well see things differently -- will interpret a situation.

Deputy State's Attorney William Roessler recalls a second-degree rape case he tried last year in which a 17-year-old high school girl had gone to a man's boarding house room and smoked cocaine and marijuana with him.

Although acknowledging the 28-year-old man did not use any physical force or direct threats, she claimed she was raped. The force, Roessler told the jury, was the man's suggestion that he would abandon the girl, who was white, to

find for herself in a predominantly black neighborhood in Annapolis.

After deliberating 90 minutes, the jury found the man not guilty.

"The jury found that it was not enough force," Roessler says. "To a jury, force is always a question. The jury may not require the victim to be beaten, {but} they do expect some degree of fear to come, from a weapon or some physical force."

Roessler later prosecuted a case in which the victim had smoked crack with her attacker and he demanded sex in return. When the woman refused, he beat and raped her. The jury convicted him.

Juries, Ferris and Welsh agree, like to latch on to tangible signs that a crime has taken place.

For example, although Theresa had some injuries, one juror said, they did not appear serious. "Some of us had just served on another case where the victim had bruises and bite marks," said juror Jennifer Mohr, 22. "Her injuries seemed mild compared to that."

Yes or no?

Even trickier than the question of force, however, is the issue of consent. Whether a woman agreed to have sex is often determined by her previous behavior or association with the alleged attacker. A woman who is raped by a man she had never met before and who broke into her home while she was sleeping has a better chance of seeing her attacker go to jail than one who spent the hours prior to the attack in his company.

Hitchhiking, accepting a date, sharing some drinks, letting him into her home, a previous relationship -- all can surface as black marks against a woman claiming she was raped.

"A history or relationship with the defendant helps the {defense} the most," county Public Defender Alan Friedman says.

A 45-year-old woman who served on the jury in Theresa's case said the victim's testimony that she was afraid of her ex-boyfriend but remained friends after the breakup colored her view of the accusation.

"It was a hard verdict," she said. "All of us kind of felt that if she was so scared of him, why did she seek him out? I believe he was there and that there was sex, but not forceable. There was a lot of doubt about whether it was something not invited."

Ferris complains of a "double standard" for women.

"Society somehow blames the victim if she puts herself in his company," she says. "If she accepts a ride or a date with a man, society somehow makes the leap that other kinds of activity are also accepted."

What if the woman did have a relationship with the defendant? What if she did have sex with him before or let him know that she wanted to in the future?

Jennifer Corry, an assistant county public defender, recalls a 26-year-old man she defended on a rape charge last year. The jury found him not guilty after the victim, a 16-year-old girl, told police that the man, whom she had dated a

few times, picked her up from work and raped her at a friend's house.

According to police, he pulled the phone out of the wall. During the attack, he masturbated in front of her and asked if it was the first time she had been raped.

But the case fell apart when the jury was shown sexually explicit letters the girl had written before the attack.

Another problem affecting the credibility of rape accusations, police say, is the fact some women have been known to fabricate the charge.

"Sometimes you get a teen-ager who needs an abortion and she says she was raped while walking in the woods," Welsh says. "I've seen women take gray eye shadow or some other kind of makeup and put bruises on themselves, or cut themselves."

But investigators can counter those deceptions. A good investigator with doubts, Welsh says, will check out the woman's story and look into her background.

Corry said the hardest part of her job as a public defender is determining what would compel a woman to lie about being raped.

She said her client never had sex with the 16-year-old girl. The girl's motive for lying? Rejection.

"I think we were dealing with a young woman having a difficult time dealing with a relationship with someone a little older," Corry says.

Personalities on trial

Society's attitudes toward rape are reflected in juries; each member, Welsh says, arrives in court with his or her own opinion of how a rape victim should act or what she should look like.

A rape trial often evolves into a personality contest, with both the victim and the defendant vying for jurors' sympathies. Appearances can be everything.

One woman who served on the jury in Theresa's case said the victim acted too emotional.

"I think she hurt her own case," said the woman, who asked not to be named. "When she came into court she was crying. At one point, {her ex-boyfriend} mentioned that she was sitting on the floor having a temper tantrum. That was the kind of impression she left us with, that she would do something like that."

Says Welsh, "If the victim has a tattoo on her arms, they will automatically stereotype her. The biker-looking victim -- they will take what she said differently than if she was a Sunday school teacher."

Appearances, however, do not always work against a victim.

Ferris recalls a case she prosecuted last fall in which the victim, a 16-year-old girl, met her attackers through a telephone party line.

The two men picked her up at her home and drove to Harundale Mall, where they took turns raping her in their car.

Although the defense attorney called it "consensual group sex" and one defendant's mother testified the victim had called her son after the attack, both men were convicted.

Ferris says the case could have gone the other way without a key element.

"I think the fact that she was blind made the state's case stronger," Ferris says.

Illustration

COLOR PHOTO PHOTO; Caption: Donny Brown is serving five life terms in the state penitentiary in Jessup for raping five Pasadena women in the mid-'70s. Reporter Kris Antonelli, who writes that Brown attacked women because he wanted to be in control, examines rape and how the legal system deals with it in today's four-piece series, "Rape & the Law." Police Sgt. Bonnie Welsh says juries don't understand the psychology behind rape: "It's not about sex, it's about power, anger and humiliation."; Credit: THE ANNE ARUNDEL COUNTY SUN -- GARO LACHINIAN THE ANNE ARUNDEL COUNTY SUN -- ALGERINA PERNA

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