

INVESTIGATION OF SEX CRIMES AND THE LAW OF CONSENT IN UTAH

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Credits

- Information for some of the slides in this presentation comes from the 2007 handbook Prosecuting Alcohol-Facilitated Sexual Assault by the American Prosecutors Research Institute, the research and development division of the National District Attorneys Association, 2007. Slides 75-88 and 92-124 are attributed in whole or in part to the above listed handbook.

Believe Your Victim

- Robbery case analogy:
- When a woman has her purse stolen, you typically believe her that she didn't "consent" to the suspect taking her purse.
- Start from that premise, BELIEVE your victim.

Gaining a Victim's Trust and Cooperation

- Gaining a victim's trust and cooperation is crucial in the investigation of the case, and especially helpful in being able to determine and locate evidence that will corroborate a lack of consent.
- Your approach to the investigation from the beginning will set the tone and make or break your rapport with the victim.

Be familiar with the Law

- Being familiar with the law can help you build confidence in your investigation and trust with the victim.
- Utah code §76-5-406
- Utah case law

Utah Code §76-5-406

- An act of sexual intercourse, rape, attempted rape, object rape, attempted object rape, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, forcible sexual abuse, attempted forcible sexual abuse, is without the consent of the victim under any of the following circumstances:

Utah Code §76-5-406(1)

- (1) The victim expresses lack of consent through words or conduct.
- Examples of words used: "No", "Not right now", "I don't want to", "go away", "leave me alone", "I don't like you like that", "I want to go home", "I want to leave".

Utah Code 76-5-406(1) cont.

- Examples of conduct:
- Moving away, pushing the person away, trying to leave, hitting kicking or biting the person, use of any physical force against the person, resistance or attempted resistance of any form. Not cooperating with the suspect's requests or demands in any way.

Utah Code §76-5-406(2)

- The actor overcomes the victim through the actual application of physical force or violence.
- Examples: Holding the victim in any way, getting on top of the victim, pushing, shoving, hitting, biting, punching, pulling hair, dragging, using a weapon, holding victim with their legs, etc.

Utah Code §76-5-406(3)

- The actor is able to overcome the victim through concealment or by the element of surprise.
- Examples: Waiting for the victim where she lives and surprising her. Pretending to be someone else. Using the dark to trick a victim.

Utah Code 76-5-406(4)

- (4)(a) (i) The actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute the threat; or

Utah Code 76-5-406(4)(a)(ii)

- (4)(a)(ii) The actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;
- (b) as used in this Subsection (4) "to retaliate" includes threats of physical force, kidnapping, or extortion.

Utah Code 76-5-406(5)

- The victim has not consented and the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist.
- Examples: Victim is drunk or high and passed out, passed out due to strangulation, unconscious for any reason. Victim is in a coma. Victim is sedated for medical purposes. Victim is asleep, or restrained in some manner. Victim is too weak or sick to resist the suspect.

Utah Code §76-5-406(6)

- The actor knows that as a result of mental disease or defect, the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it.
- Examples: Includes mental illness, or other mental deficiency (i.e. an adult victim with a child's IQ.)

Utah Code §76-5-406(7)

- The actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse.

Utah Code §76-5-406(8)

- The actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering **any substance** without the victim's knowledge.
- Important to note it doesn't have to be an illegal substance, it can be any substance.

Utah Code §76-5-406(12)

- The actor is a health professional or religious counselor, as those terms are defined in Subsection (12), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested.

Utah Code 76-5-406(12)

- (12)(a) "Health professional" means an individual who is licensed or who holds himself or herself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor; and
- (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy.

Utah Consent Case law

- A lot of the case law is outdated because the consent statute has been significantly changed even since the 1980s.

State v. Salazar 2005 UT. App.24, 114 P.3d 1170

- Around 4 a.m. Salazar entered a bedroom in his cousin's home where the victim and her boyfriend, Salazar's cousin, were sleeping. Salazar positioned himself under the victim's blanket and began performing oral sex upon her. Victim woke up and assumed that it was her boyfriend, and didn't resist or tell Salazar to stop. At some point, victim discovered it was not her boyfriend, and pushed Salazar off the bed.

State v. Salazar

- Salazar filed a motion to dismiss and argued that lack of consent is defined in Utah Code §76-5-406 and that his conduct did not meet the statutory definition.
- The trial court denied Salazar's motion, and Salazar entered a conditional guilty plea, and then filed an appeal.

State v. Salazar

- Salazar argued that any sexual act occurring outside the circumstance in §76-5-406 must be deemed to be with consent as a matter of law. He also claimed his actions fell outside of §76-5-406.

State v. Salazar

- The court found that "Salazar's admitted actions appear to fall within the circumstances described in §76-5-406(5). There was no existing consent from the victim and Salazar knew that the victim was asleep and therefore "unconscious, unaware that the act [was] occurring, or physically unable to resist."

State v. Salazar

- Further, the court held:
- "Under this theory of lack of consent, the crime of forcible sodomy was complete at the moment the sodomy commenced upon the sleeping victim, and the victim's actions after that point are of no consequence to Salazar's guilt."

State v. Salazar

- The Utah Court of Appeals opinion stated, "This court has previously described section 76-5-406 as merely defining 'specific circumstances which will rebut an allegation of consent.' ... "We reiterate here that section 76-5-406 merely defines specific circumstances in which consent does not exist. As such it is not a shield for criminal defendants who might be able to characterize their conduct as falling outside the statute."

State v. Salazar

"Rather, section 76-5-406 limits the various theories of consent that might otherwise be available. While the existence of consent remains, generally a question of fact...facts satisfying one or more prongs of 76-5-406 establish lack of consent as a matter of law. Fact finders are not, however, precluded from determining that circumstances outside those defined in section 76-5-406 may still amount to lack of consent in any particular case."

State v. Salazar

- What does this mean?
- Utah Code §76-5-406 defines specific circumstances that will rebut an allegation of consent, and they rebut it as a matter of law.
- It limits the theories of consent that would otherwise be available to a defendant.
- Fact finders (Judge/Jury) may also determine that facts or circumstances not listed in §76-5-406 amount to a lack of consent as well.

State v. Herrera 2009 UT. App 80 (Unreported Decision)

- Sergio Herrera was convicted of rape at trial.
- He appealed and claimed there was insufficient evidence to establish that the intercourse was not consensual.
- Herrera argued that because the physical evidence was neutral, he "was convicted solely on [Victim's] testimony, which left ample room for reasonable doubt.

State v. Herrera

- Defendant argued that despite her history with him and his many unwanted sexual advances, Victim "said nothing and did nothing to keep [Defendant] from following her into her apartment, and then into her bedroom" on the night of the alleged rape.

State v. Herrera

- Victim testified that she rejected Defendant's sexual advances "millions of times" by saying "No" and by "trying to get away from [him.]"
- She further testified despite her attempts to prevent Defendant from being physically able to have intercourse with her, Defendant pushed and pulled her into a position in which he could and complete the sexual act.

Sate v. Herrera

- A physician at trial detailed the physical trauma that resulted to Victim from Defendant's assault.
- A detective also testified that Defendant's friends told Defendant "he should just run away."

State v. Herrera

- The court stated,
- "We do not agree that Victim's desire to maintain a friendly relationship with Defendant, in spite of Defendant's repetitive unwanted sexual advance makes her testimony that she did not consent to sexual intercourse with Defendant physically impossible or apparently false."

State v. Herrera

- Lack of consent is established when "the victim expresses lack of consent through words or conduct" or "the actor overcomes the victim through the actual application of physical force or violence."

State v. Stettina 645 P.2d 75

- Mark Stettina and the victim met in a tavern and stepped outside. They decided to smoke marijuana and went across the street to a sloped, grassy area to be out of view. Defendant claimed that the sexual intercourse that occurred was consensual.

State v. Stettina

- Defendant claimed it was consensual:
- No evidence of screams or physical resistance.
- No evidence of bruises, lacerations or other physical injury.
- Defendant said that Victim's verbal refusals were accompanied with laughter and that she permitted him to kiss her afterwards and hold her hand while returning to the tavern.
- Victim agreed to talk with him after.

State v. Stettina

- Court's statements regarding corroboration:
- "Corroborating evidence need not establish each and every material element of the charge of rape but is sufficient when it permits the jury to conclude beyond a reasonable doubt that the victim's account of the crime was not a fabrication."

State v. Stettina

- "Corroboration in a rape case may consist of circumstantial rather than direct evidence. It is sufficient if it affords proof of circumstances which legitimately tend to show the existence of the material facts."
- Evidence of a prompt complaint and testimony regarding the victim's condition immediately after the incident were listed by the court as admissible corroborating evidence.

State v. Stettina

- Doorman on duty testified victim reported the incident to him. Victim was crying and very upset. Police called within one hour of incident and while victim was still at the tavern.
- A waiter at the tavern observed victim in the tavern office crying and very upset.

State v. Stettina

- Responding male police officer testified that victim was so distraught that he couldn't question her properly.
- Male police officer had to call a female police officer to aid in questioning and transporting victim to hospital.
- Female police officer described victim as crying and shaking quite badly while en route to hospital and during the hour at the hospital.

State v. Stettina

- Victim testified that defendant had placed his hands over her nose and mouth, making it difficult to breathe, and had asked her, "Do you want me to kill you?"
- **Court stated: Acquiescence induced by fear or reasonable apprehension of bodily harm or death does not constitute consent to sexual intercourse.**

State v. Herzog 610 P.2d 1281 Utah 1980

- Victim and her husband had an argument at a "lounge" in SLC, and her husband left without her.
- Victim began walking toward her home, and walked past Robert Herzog, the defendant, who was sitting in his pickup truck in a parking lot.
- Herzog offered victim a ride.

State v. Herzog

- Victim accepted ride. Victim asked Herzog to stop so she could buy beer. They stopped and victim entered store and bought beer.
- At some point Herzog asked victim if she wanted to smoke a "joint" and she agreed. She said because of the dispute with her husband they should go somewhere else.

State v. Herzog

- Defendant drove to the mouth of Parley's canyon and went to a flat overlook above the freeway.
- It was dark, no houses or structures.
- Another car was there at first, left shortly thereafter.
- Defendant parked and they shared a marijuana cigarette.

State v. Herzog

- Both drank one beer.
- Defendant suggested having sex.
- Victim declined, said she was married.
- Defendant took her purse, victim told Defendant to keep it and tried to leave the vehicle.
- Defendant grabbed her blouse and said, "Don't make me violent," and "Don't make me force you."

State v. Herzog

- Defendant assured victim if she cooperated she would not be hurt.
- Victim tried to dissuade Defendant and asked him to take her home. He refused.
- Victim got out of the truck and partially disrobed. Defendant got out and partially disrobed, both then got back in the truck.

State v. Herzog

- Defendant couldn't get an erection and ordered the victim "make me hard."
- Victim did so by manual stimulation.
- Defendant and victim then had intercourse.
- Defendant dropped victim off 1 ½ blocks from home. On the way Defendant said, "I'm sorry I forced you."

State v. Herzog

- Defendant asked victim not to report the incident.
- Defendant shut off his headlights when he dropped off the victim. (Admittedly so she would not learn his license number.)
- Victim managed to observe the license plate number.
- When victim's husband returned home that afternoon, she advised him of the incident and she was taken to the hospital for an exam.

State v. Herzog

- Defendant claimed that since the woman went with him voluntarily, initially refused his advances, but thereafter gave no resistance, failed to make any outcry or attempt to escape, and even assisted him in completing intercourse, that it was consensual.

State v. Herzog

- The Court Stated:
- One does not surrender the right to refuse sexual intimacy by act of accepting another's company, or even by encouraging and accepting romantic overtures.

State v. Herzog

The Court also stated:

- The law does not require an individual, in the face of open and apparently genuine threat of violence, to engage in detached reflection regarding sincerity with which it was made, or likelihood that it will be carried out. This is so whether or not defendant makes open display of deadly weapon, and whether or not the victim makes outcry when such would be futile there being no one within shouting distance.

State v. Archuleta 597 P.2d 1348 (1979)

- Testimony of victim is supported by the evidence involving chloral hydrate capsules given to her by defendant and level of trichloral ethanol in victim's system. Court held the evidence was sufficient to show victim's lack of consent, and upheld the Defendant's conviction.

Investigating



Gaining a Victim's Trust and Cooperation

- Gaining a victim's trust and cooperation is crucial in the investigation of the case, and especially helpful in being able to determine and locate evidence that will corroborate a lack of consent.
- Your approach to the investigation from the beginning will set the tone and make or break your rapport with the victim.

Asking the tough questions

- It is crucial to encourage the victim to be completely honest about what happened.
- This includes all the "tough" questions, such as: prior sexual relationship if any between the victim and the suspect, prior contact between the victim and the suspect, whether or not any drugs were used before, during or after the sexual assault, etc.

Corroboration or the Lack of Corroboration

- Corroboration is key in sex crimes cases. Any corroboration of the victim's story may be helpful in proving a lack of consent.
- If there is a lack of corroboration, that will also help us in making a charging decision.

Thorough Investigations

- Investigate the case like you would a homicide, aggravated robbery, or any other major crime.
- Be thorough, and utilize your resources.
- If you don't we will be held accountable for it at trial by the Defense attorney and ultimately the Jury.

Victim

- Describe the victim's location upon arrival.
- Record any spontaneous statements made by the victim.
- Statements describing how the injuries happened.
- Statements about conditions leading to the incident.
- Statements about use of drugs, alcohol, etc.

Victim

- Describe the victim's emotional condition and demeanor.
- Angry
- Apologetic
- Crying
- Fearful
- Hysterical
- Calm
- Afraid
- Irrational
- Nervous
- Threatening
- Others, explain

Victim

- Describe the victim's physical condition and injuries.
- Complaints of pain.
- Bruise(s)
- Abrasion(s)
- Minor cut(s)
- Laceration(s)
- Fracture(s)
- Concussion
- Other

Victim

- Note torn clothing.
- Note smeared make-up.
- Note evidence of injury (diagram), details
- Note victim's relationship to suspect

Victim

- Record height, weight and age of victim
- Get written or recorded statement from victim (both if possible)

Suspect

- Describe the suspect's location upon arrival.
- Record any spontaneous statements made by the suspect.
- Statements describing how the injuries happened.
- Statements about conditions leading to the incident.
- Statements re: use of drugs, alcohol, etc.
- Record all interviews of the suspect.

Suspect

- Prevent communications between the suspect and the victim/witnesses.
- Describe the suspect's emotional condition and demeanor. (Same as victim.)
- Describe the suspect's physical condition and injuries. (Same as victim.)
- Pay attention to potential self defense marks such as scratches on front or bite marks to chest, under arms, upper arms.

Suspect

- Note evidence of substance/chemical abuse by suspect.
- Interview Suspect.
- Record alibi statements.
- Advise suspect of rights.
- Obtain waiver.
- Get statement.
- Note height, weight, and age of suspect.

Witnesses

- Interview the reporting party.
- Interview witnesses separately.
- List names, ages, and dates of birth of children.
- Interview children and note emotional demeanor. Children can be interviewed at the Children's Justice Center if they need to be interviewed in detail. Get written statements from children, out of the presence of other witnesses, defendants, or victims.
- Write down *all* statements (record if possible.)

Witnesses

- Types of statements:
- Present Sense impression. This is a statement describing an event or conditions.
- Excited Utterance. This is a statement relating to a startling event.
- Then existing mental, emotional, or physical conditions.

Witnesses

- Types of statements (continued).
- Statements for purpose of medical diagnosis or treatment.
- Statements under impending death.
- Statements against interest.

Evidence

- Photograph suspect's injuries, *or lack of injuries*.
- Seize any corroborative evidence:
- Weapons
- Pieces of broken items or glass.
- Torn clothing.
- Bloodstained articles.
- Damaged personal items of the victim.

Evidence

- Document threats prior to, during, and after incident.
- Record the 911 case # and incident #.
- Request the 911 call, or have supervisor request it.
- Criminal history (BCI, NCIC).

Evidence

- Obtain medical release from victim.
- Obtain copy of medical report including Dr.'s name, address, phone number.
- Document complaint of injuries.
- This is a Hearsay Exception: a statement of declarant's then existing state of mind, emotion, sensation or physical condition which includes mental feeling, pain and bodily health.

Evidence

- Document prior history of abuse.
- Reported
- Unreported
- Convictions
- Where they occurred
- Reports or report numbers
- Prior requests for service to that address

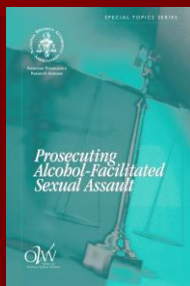
Evidence

- Obtain names, addresses and phone numbers of ambulance or paramedic personnel treating the victim.
- Obtain copies of any protective orders.
- Get medical releases that include the ambulance or paramedic personnel.

Evidence

- Note condition of crime scene.
- Disarray of furniture or other items.
- Damaged property, furniture, walls, etc.
- Blood or other physical evidence.
- Photograph crime scene.
- Photograph victim's injuries.
- Make arrangements to photograph victim's injuries a couple of days later.

Prosecuting Alcohol Facilitated Sexual Assault



NDAAs Website for Handbook

- www.ndaa.org
- Click on the Publications tab
- Scroll down to Violence against women
- Click on the "Prosecuting Alcohol Facilitated Sexual Assault" link.

Rape vs. Drunken Sex

- This is a common scenario that we encounter with our cases.
- One of the hardest to distinguish and to prove.
- When investigated thoroughly and appropriately these cases become much more viable to prove at trial.

Analyzing Consent and Distinguishing Rape from Drunken Sex

- How drunk was the victim?
The more intoxicated the victim was, the less likely it is that she was capable of consenting. The following factors can aid in this determination:

How Drunk was the Victim?

- Was she conscious or unconscious? Did she regain consciousness during the rape? Did she pass out during the rape? If so, what did the accused do?
- Did she black out?
- Did she vomit?
- Could she speak? Was she slurring? Was she able to communicate coherently?

How drunk was the victim?

- Was she able to walk or did someone (in particular, the defendant) have to carry her? Did she have to lean on someone?
- Was she able to dress/undress herself?
- Were her clothes disheveled?
- Was she responsive or in a nonresponsive state?

How drunk was the victim?

- Was she able to perform physical tasks or was her coordination impacted? For example, did she light the wrong end of a cigarette or spill things?
- Did she urinate or defecate on herself?
- What was her level of alertness?

How drunk was the victim?

- Did she do anything else to indicate whether she was capable of cognitive functioning? For example, did she use her credit card? Did she use her cell phone or e-mail?

Is there a motive to lie?

- If not, why is the victim's veracity being questioned?

What are the time and circumstances of the report?

- Did the victim come forward as soon as she was physically able or did she wait?
- What made her come forward?
- Did she tell anyone about the incident prior to going to the hospital or calling the police?
- What prompted her to report when she did and why?

Delayed Report

- A delayed report is not fatal to the prosecution of a rape case; however the reason for the delay must be explored. Investigators must interview any eye or ear witnesses to the delayed report, the rape itself, and to anything that might have happened in the intervening time between the rape and the report to the police.

Delayed Report

- When analyzing the impact of a delayed report, remember that according to the National College Women Sexual Victimization Survey, almost half of the women who are by definition rape victims do not self-identify as rape victims. These women know that something bad happened to them, that someone had sex with them when they were too drunk to consent, or that someone held them down and forced them to have sex against their will. But they often do not label themselves as "rape victims." If a victim does not self-identify as a rape victim, it will impact her choice to call the police immediately. Why call the police if you have not been raped?

Victim's Physical Condition

- What was the victim's physical condition? Was she menstruating? Was she wearing a tampon? Was she previously injured? Was she undergoing medical treatment for a yeast or fungal infection or other uncomfortable condition? Was there anything else that would argue against the intercourse being voluntary?

Was the victim injured?

- If so, what do the injuries show?

Injury First Photo



Injury Second Photo



Injury Third Photo



Where did the incident happen?

- Which of the parties was at the incident location first? Is this a case where the victim went to bed and the defendant followed her to her bedroom? Are the facts of the incident consistent with a consensual encounter?

What sexual positions are alleged and how do those positions fit with the victim's degree of intoxication?

- For example, it would be difficult (although not necessarily impossible) for a person who was too drunk to consent to intercourse to stand and have sex in a shower stall.

Was there prior interaction between the victim and the defendant?

- Are they boyfriend and girlfriend?
- Did they even know each other before the night in question?

Defendant's Predatory Behavior

- Did the Defendant force or threaten the victim?
- Using force or threats of force to accomplish intercourse is not consistent with consensual sex.

Defendant's Predatory Behavior

- Did the victim say "no?"
- If so, why did the defendant disregard her "no?" Why was the victim's "no" not good enough for the defendant?
- Ignoring a sexual partner when she says "no" is not consistent with consensual sex.

Defendant's Predatory Behavior

- Look at the defendant's level of intoxication.
- What was his capacity to do other things? Could he walk? Talk? Play pool? Drive a car? Was his speech slurred?
- The more sober he was, the easier it is to show he was a predator, especially if the victim was extremely intoxicated.

Defendant's Predatory Behavior

- Was there any planning or manipulation on the part of the defendant?
- Were there any attempts to deceive the victim?
- Did the defendant do anything to control the situation and overcome the victim's will?
- Did he isolate her? Lie to her?

Defendant's Predatory Behavior

- Is there any evidence of grooming?
- Did the defendant do anything prior to the rape to gain the victim's trust?
- Did he do anything to make it easier to rape her?
- Is there any evidence that he set her up? For example, did he talk about making a "special punch" to get his "target" drunk? Did he buy her drinks and encourage her to drink them in an attempt to get her drunk?

Defendant's Predatory Behavior

- Did the defendant prey upon the victim's vulnerabilities?
- Did he do anything to wear down the victim's resistance?
- Is there any evidence that the defendant selected the victim because he knew that she would be an easy target?

Defendant's Predatory Behavior

- Has the defendant done it before?
- Has anyone else ever accused him of rape or other misconduct? Has anyone ever seen women leaving his room/apartment/home crying or distraught?

Defendant's Predatory Behavior

- Did the defendant know the victim?
- If so, did he use his knowledge or familiarity with the victim to gain access to her or to isolate her? Did he use his knowledge to attempt to silence her?

Analyzing Credibility and Corroboration

- The victim's credibility can be broken down into five components:
 - 1. Actual Credibility
 - 2. The victim's ability to perceive at the time of the incident
 - 3. The victim's ability to remember what happened.
 - 4. The existence of corroborative evidence.
 - 5. The victim's likeability.
- The first four factors are valid charging considerations, the fifth is not. However, it must be understood and recognized by law enforcement and prosecutors if they are to obtain a conviction.

Victim Credibility is Crucial

In a case where a victim deliberately withholds information, lies about small details, or is inadvertently inaccurate, jurors will likely be reluctant to convict the defendant because they will be worried that a victim who lies about small details will be inclined to lie about the rape itself, especially when the law requires the jury to believe the prosecution's case beyond a reasonable doubt.

Actual Credibility

- Law enforcement and prosecutors must encourage the victim to be completely honest, even about embarrassing or seemingly insignificant details.
- Explain to the victim the importance of telling the truth, no matter how painful or embarrassing it might be.
- Explain the significance of omitting information, even about seemingly insignificant details.

Ability to Perceive

- How well was the victim able to perceive what was happening at the time of the incident?
- Look at the following:
- What is the victim able to tell you she perceived at the time?
- Can she relate details of the incident?
- Can she tell you who else was there? What were they doing?

Ability to Remember

- Alcohol consumption diminishes the ability of the victim to remember what happened.
- "As the amount of alcohol consumed increases, so does the magnitude of the memory impairments."
- Large quantities of alcohol, particularly if consumed rapidly, may result in the victim experiencing either a fragmentary or en bloc blackout.

Ability to Remember

- Fragmentary blackouts occur when people may recall portions of the episode after the incident when cues for events are provided.
- En bloc blackouts have "definitive starting points, contain amnesia for all events within a discrete period, end with a sense of lost time, and require a high blood alcohol concentration."
- Not a process of forgetting, but rather one of not remembering.

Existence of Corroborative Evidence: Physical Evidence

- Physical evidence
- In addition to traditional physical evidence, investigators should look for:
- Photos on digital cameras and cell phones (or social media sites)
- Cell phone records, and any voice messages or other recordings that might exist.

Corroborative Evidence: Physical Evidence

- Investigators should also look for proof of where the victim was and what was done there.
- Such evidence can include blood, hair, urine, vomit, clothing, personal items, or even credit card receipts.

Corroborative Evidence: Fresh complaint witnesses

- The victim may delay in reporting, thereby creating evidence collection problems and credibility issues. It is crucial to explore why the victim delayed reporting.
- What did she do after the incident?
- Who saw her first after the incident?
- Who did she first tell?
- Why did she report when she did and to whom did she report?
- Law enforcement must interview each of those people.

Corroborative Evidence: Chain of Events Witnesses

- When looking for corroboration, investigators should ask the victim whether anyone else was present during any part of the incident.
- Are there any witnesses to the ingestion of the alcohol or to the incident?
- What did they see or hear?

Friends of the victim

- Who sees the victim on a regular basis?
- Who saw the victim around the time of the incident?
- What can the victim's friends tell you?

Other women the Defendant may have dated

- Other women the Defendant may have information that corroborates the victim's story.
- There may be unreported sexual crimes the Defendant has committed against other women he dated.

Friends of the Defendant

- Even though interviewing these witnesses may seem illogical because one would presume they would be on the defendant's side.
- They frequently corroborate innocuous details, or even disclose details they do not believe to be important, but which are crucial to the case.

Surveillance tapes

- From the place the victim was drinking.
- Anywhere she was after drinking.
- Anywhere the victim was just prior to or after the assault.

Medical Evidence

- Are there any physical injuries?
- What if anything do they demonstrate?
- Seemingly innocent injuries, such as scrapes to the victim's knees from falling down, might prove corroboration of her being too drunk to consent, or being pushed down by the defendant.
- Encourage SANE exams!

Interview the Suspect

- Whenever possible, INTERVIEW THE SUSPECT.
- Although the defendant may refuse to speak to an investigator, many times suspects in sexual assault cases will want to tell the police why they are not guilty. They will often want to talk about how the victim consented.

Interview of Suspect

- The suspect will often admit that he had sex with the victim, but will claim that it was consensual.
- The suspect may use the victim's history of substance abuse or promiscuous behavior to direct blame to her and hold her responsible for the sexual contact.

Interview of the Suspect

- In the case of an alcohol or drug facilitated sexual assault, investigators should get the suspect to acknowledge the victim's extreme level of intoxication.
- For example, he may admit that she was throwing up and lying in her own vomit.
- He will often try to convince the investigator that the sex act was still consensual, but it becomes more difficult for the jury to believe.

Interview the Suspect

- If the suspect will agree to be interviewed ask:
- Did he know that the victim was drunk?
- What signs of intoxication did the victim exhibit?
- Did he see her drink? How much did she drink?
- Who gave her the alcohol? Who purchased the alcohol?

Interview the Suspect

- Ask the suspect why he thinks the encounter was consensual (if he claims it was.)
- Did the victim say yes? Did she say no? If she said "no," why did he disregard it or not believe it?

Pretext Phone Calls

- Suspects may acknowledge that intercourse occurred and that the victim was intoxicated.
 - Investigators should plan carefully.
 - What is going to be said during the call?
 - What is the goal of the call?
- Is it to corroborate intercourse, that the victim was passed out, said no, or some other goal?

Pretext Phone Calls

- Decide who is going to make the call.
- The victim or a mutual friend?
- If it is going to be the victim, make sure the victim is emotionally stable enough to handle the call.
- If the victim is working with a victim advocate or counselor, work with that individual as well.
- A pretext phone call shouldn't be made at the cost of further emotionally injuring the victim.

Pretext Texts, etc.

- Pretext texting may be a better option, the victim herself doesn't even have to do it, and investigator can do the actual texting by using the victim's phone.
- Can also do pretext e-mails, facebook contact, etc.
- Get creative, social media can be very helpful in your investigations.

Pretext Calls, texts, etc.

- Pretext calls, texts, e-mails, or other pretext contact with the suspect.
- Pretext contact with the suspect should be discussed and scripted when possible.
- You can involve the victim if it's a phone call, or just have the victim assist you by allowing you to use their phone, e-mail account, etc.

Social Media

- Facebook
- Twitter
- E-mails
- Text Messages
- Instant Messaging
- Get warrants for Suspect's information and get consent from the victim for her records.

Cell Phone Records

- Victim's Phone
- Defendant's Phone
- Other witnesses' phones: people who say that either the Victim or the Defendant said something to them about the sexual encounter.
- Take Victim's and Defendant's phones to RCFL or have someone in your department do a cell phone dump for you.

Jail and Prison Calls

- Always request them if the suspect goes to jail or prison. They are often helpful to your case, especially if the Defendant refuses to be interviewed.

Corroboration Examples



View of East High From Stadium



East High Stadium and
Bathrooms



East High Stadium Women's
Bathroom



East High Stadium and Women's
Bathroom



Inside Women's Bathroom Door



Inside Stadium Women's Bathroom



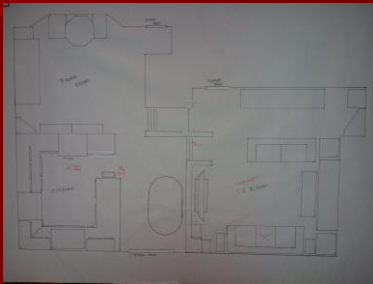
Bathroom Stall Where Rape Occurred



Intersection and 7-11



Diagrams of the Crime Scene



Conclusion

- You never know how important a piece of evidence may end up being. Often times it is too late to go back and get the evidence if it isn't done immediately or very close in time to the occurrence of the crime.
- Do the best you can to put as much detail in your reports as possible, to investigate cases thoroughly, and to collect evidence and document everything possible in your reports.

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