

Mini-Review

Rape: When the Exam Is Normal

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Abstract. In this case report we present the sexual assault of a stuporous victim by a suspect who videotaped their encounter. We review the role of substance use and exam findings and discuss both victim and suspect factors that may lead to a negative examination of the victim.

Introduction

Rape is a crime of violence. Protocols for assessing sexual assault victims focus on the identification and documentation of both genital and non-genital injuries.¹ Improved methodology including colposcopy and trained forensic examiners have increased the recovery of forensically valuable evidence and have identified a pattern of genital injury not previously understood.² In fact, the knowledge that sexual assault trauma has consistent topologic features, varying with the site and nature of the tissues,^{3,4} probably explains the increase in exam findings even for those using gross visualization.⁵ Nevertheless, injury is not the inevitable consequence of forced sexual contact, and negative examination findings are reported in every study.⁶ The reason for this is multifactorial and undoubtedly the result of the complex interaction between victim and assailant. In this case report, we present a victim with negative physical findings and explore the causes for this exam result.

Case Report

History

A 16-year-old female reported to the Sexual Assault Response Team (SART) that she was sexually assaulted by a 20-year-old male whom she met one week prior. The victim reported that they were drinking a bottle of rum while the suspect drove around town. The victim reported that she began “getting really drunk.” She complained to her companion of

blurry vision, slurred speech, dizziness, and began vomiting in the car. They proceeded to his home and she was assisted into the house. She remembers walking into the home, lying down on a bed, and falling asleep. The victim awoke late in the morning, naked in the suspect’s bed. She recalls the suspect’s penis in her vagina at some point but has no memory of anything else. She described herself as “passed out.” Additionally, the crotch of her jeans was torn when she got dressed, and she does not know how that happened. She arrived at the SART Center approximately three hours after waking.

Examination Findings

A forensic nurse performed a medical-forensic examination. Evidence collected included the victim’s clothing, pulled head hair, combed and pulled pubic hair, oral swabs and vaginal swabs. Neither a blood alcohol nor drugs of abuse screening tests were done. There were no extra-genital injuries, although the victim complained of some mild supra-pubic tenderness with palpation. Similarly, an ano-genital examination, completed using gross visualization and colposcopy, was negative. The victim was treated with emergency contraceptive and prophylactic antibiotics and discharged to her parents.

Law Enforcement Findings

A video camera and recorder had been set up in the suspect’s bedroom. The last seven minutes of recording on the video show the suspect engaging in penile vaginal sex with the victim. The video begins with the victim lying on her back on a waterbed with her head turned to one side and eyes closed. Her arms are lying at her side and her legs are in a frog-leg position. She is naked and unconscious. The camera zooms into her genitalia and the suspect clinically separates the labia exposing the vaginal opening; he digitally penetrates her vagina twice. He then makes a great show of putting on a condom but fouls up the maneuver and has to repeat the action. He mounts the victim who

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has never moved, and gently inserts his penis into her vagina. He then proceeds to have penile vaginal sex nearly withdrawing his penis with every stroke. Except for the passive movement of her body created on the waterbed by the suspect's repeated thrusting, the victim appears unresponsive. Twice during this assault she raises her hand; it rests momentarily on his back and then falls limply to the bed. After four minutes of penile vaginal intercourse, the suspect repositions the victim's left leg over his shoulder. He continues having intercourse and as he does so the victim's knee is flexed up to her shoulder. At this point, the victim moans and turns her head to the opposite side. In response, the suspect gently repositions the victim's leg back on the bed. The video abruptly ends. Law enforcement officials confirm that the battery to the camera went dead. Therefore, it is unknown how long the sexual activity lasted.

Crime Lab Findings

Numerous spermatozoa were found on the vaginal swabs and smears despite the condom used in the video. A DNA match was made with the identified suspect.

Judicial Outcome

The suspect was charged with sexual assault in the second degree, exploitation of a minor, and possession of child pornography. He pled guilty and was sentenced to two years.

Discussion

In this case, captured on video, both victim and assailant behaviors contribute to the negative exam findings. The victim was severely intoxicated. This delayed her report and substantially impaired her recall of events to the examiner. Several studies have reported an inverse relationship between time to exam and physical findings.^{3,6–10} Moreover, lack of historical detail can impede law enforcement efforts to investigate the incident. Forensic examiners (FE)

should be familiar with substance use among victims of sexual assault, typically 50–60%, and recognize that alcohol and drugs are important risk factors for sexual assault.^{11–13} Specifically, alcohol impairs cognitive processing and narrows cognitive focus, which may cause women to miss or ignore clues that suggest an assault is likely to occur and decrease their ability to resist an assault.¹⁴ Importantly, substance use to the point of mental and physical incapacitation may, in fact, be a warning sign for serious abuse problems. In fact, the American Psychiatric Association considers legal problems related to drinking a sign of a serious substance abuse problem.¹⁵ The need for a sexual assault forensic exam, similar to a DUI, may be just that warning. The FE has the opportunity and the obligation to make the appropriate referral for drug and alcohol counseling. Screening and brief counseling has been shown to reduce alcohol use^{16,17} and the US Preventive Health Task Force recommends such action.¹⁸ Victims with abuse problems have substantially more difficulty coping with the aftermath of rape; drug recidivism rates are high and posttraumatic stress prolonged in this group.¹⁹

The impact of substance use/abuse on victim injury is a concern and an important area of investigation. In the past, researchers speculated that offender use of alcohol would lead to disinhibition of violence and therefore, produce greater injury to victims. Similarly, victim substance use might also increase injury by causing the victim to participate in sexual acts to which she is unaccustomed, making her more clumsy or altering the normal physiologic responses to sexual activity. Previously, studies by those who perform rape evaluations do not support these suppositions (Table 1),^{4,6,7,9,10,20–22} with only two reports showing an association with nongenital trauma. Only two studies showed an association with non-genital trauma. A large study in 2008 is the first to show increases in anogenital injury with both alcohol use and unconsciousness. These studies are particularly important because victims with more severe injury are statistically more likely to report for examination. Of note, only one study in this group

Table 1. Studies from Centers That Examine Victims

Date	Author	Number of Subjects	Who Used	Association of Alcohol use with Injury	Association of Drug use with Injury
1987	Cartwright ²⁰	440	Victim	None (NGT/GT)	None NGT/GT
1992	Ramin ²¹	258	Victim	None (NGT/GT)	None NGT/GT
1999	Seifert ²²	232	Victim/Suspect	None (NGT/GT)None	None (NGT/GT)None
2001	Adams ⁹	214	Victim	None (GT)	None (GT)
2002	Sachs ⁷	209	Victim	None (GT)	None (GT)
2003	Jones ⁴	766	Victim	None (GT)	None (GT)
2004	Sugar ¹⁰	819	Victim	None (GT); Increased (NGT)	None (GT); Increased (NGT)
2005	Read, KM	831	Victim	None (NGT/GT)	None (GT); Increased (NGT)
2008	Drocton, P	3356	Victim	Increased (GT)	None (GT)

GT=genital trauma; NGT=nongenital trauma.

(Seifert²²) obtained information about suspect use of drugs and found no correlation with physical injury to the victim. Investigators now believe that offender aggression is the strongest predictor of victim injury, even in the absence of alcohol.²³ Alcohol and violence may be independent strategies used by offenders to complete rapes. For example, if offenders are drunk, victims may fear that they are out of control and may decide not to resist. Conversely, if the victim is drunk, as in this report, it impairs her ability to resist and less violence may be needed to complete the sexual assault.^{19,24} This may explain reports, which show that victims of drug-facilitated sexual assault have fewer genital and non-genital injuries than the general rape population.²⁵ As so amply illustrated by this case, violence may not be needed or used by the offender. Violence with attendant physical trauma is commonly recognized in stranger assault. The care and gentleness of this perpetrator work to his benefit: no genital or non-genital injuries and no clear history from the victim equals no evidence that a sexual assault occurred, facts which this perpetrator must have been confident about because he left his DNA and perhaps had successfully practiced this kind of assault previously. Had the video not been located in our case, the investigation would have ended without prosecution.

Another important issue in this case is the recording of the crime itself. In the past, this type of activity has been associated with more violent sexual offenders. However, the ubiquitous distribution of inexpensive, portable audio and visual recording devices makes the documentation of sexual crimes more common across the spectrum of perpetrators. Therefore, the FE and law enforcement must be alert to the possibility that an assault may have been recorded and inquire about capable equipment. Additionally, having a complete recording of this crime might be considered the best possible evidence. However, a recording of a person who is essentially anesthetized is problematic. This is a condition rarely witnessed by the lay public and consequently, may be difficult to interpret. In our case, the victim's purposeless movements were initially misperceived as evidence of consent by law enforcement officials. The notion that movement equals consciousness is common and incorrect. Jurors will need to be disabused of this idea, and attorneys should seek appropriate medical consultation.

There are many reasons for a rape examination to be negative. This case reveals some important contributions to this result. Examiners should be mindful that drug-facilitated sexual assault might be engineered by the offender or an opportunity given to the offender by the victim. In this setting, the calculated avoidance of violence by the perpetrator may cause the exam to be normal. Forensic teams need to add drug and alcohol screening to their routine

evaluations because it not only provides an opportunity to make appropriate referrals for substance abuse problems but also may help to explain physical findings. Moreover, in most states, additional charges can be filed if drugs are administered in order to accomplish a felony.²⁶ Whether the use of recording devices is more common in this type of assault remains to be seen. Nevertheless, their use should be considered in any sexual assault and sought out immediately before this evidence can be destroyed.

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