Crying Wolf: Drawbacks to Washington Rape Shield Statute

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Washington’s “Rape Shield Law” limits a person charged with sexual assault from cross-examining their accusers regarding past sexual behavior.

The spirit of the rape shield law is admirable and has merit. Clearly, just because someone has ‘slept around’ or has a kinky sex life, does not mean they consented to sexual contact on every occasion.
However, this law can have some very questionable consequences. It may even prevent the accused from receiving a fair trial.

Many sexual assault and sexual abuse cases can be “he said, she said.” You may think the defense team would be high-fiving over a lack of physical or other corroborating evidence. On the contrary; it can be absolutely terrifying for the accused when the entire case rests on the word of the alleged victim. The accused has to combat allegations while being careful not to overstep the bounds of the shield law.

Naturally, one of the ways to defend against false allegations would be to prove that the character of the alleged victim is untrustworthy.

So what if the accuser has a history of lies in regards to their sexual activity? Can that be presented in court?

A case that hinged on the application of the Rape Shield Law was recently tried in Washington State.

Mr. Lee was charged with five counts of third degree rape of a child. He allegedly had sex multiple time with a fifteen year old girl (‘J.W.’). Arrested in 2009, he was released when the State did not immediately file the case. Finally charged in 2013, Mr. Lee initially complained that such a delay was manifest error because his right to a speedy trial was violated under the Sixth Amendment. Though the statute of limitations had not lapsed, he claimed the delay was simply too much for him to bare. The Washington Supreme Court quickly rejected this argument.

The defense’s second argument did bother the Supreme Court, however. The 15 year old victim, during the same time she was supposedly having sex with Mr. Lee, had lied about rape allegations against another individual. J.W. and her mother had reported a rape by a school classmate to the police. However, they soon retracted their statement and explained that the sex was consensual. The story regarding rape was completely fabricated. Understandably, Mr. Lee wanted to bring this prior false rape allegation up in his trial.
Most reasonable minds would agree that this information was relevant to the case at hand.

However, due to the shield law, the trial court in the case decided to “balance” the admissibility of the accuser’s prior lie. There was an obvious need on the defense’s part to demonstrate her character for untruthfulness, particularly when it came to her sexual experiences. The court ruled that Mr. Lee was allowed to ask J. W. if she had made a prior false accusation to the police, but he could not specify it was a rape accusation or question her about past sexual behavior.

Mr. Lee ended up being convicted on two of the five counts. He was sentenced to 34 months in prison. This was a pretty good result because there was other strong evidence against Mr. Lee. For example, J.W. turned over a ‘love letter’ to the police, which described specific sex acts Mr. Lee enjoyed. Strangely, Mr. Lee admitted he wrote the letter, but said it wasn’t to her.

Mr. Lee appealed his conviction, contesting the rape shield ruling which prevented him from presenting evidence of the prior false rape accusation.

The Washington Supreme Court agreed with the trial court’s balancing act. Partially, this was due to how the defense used the prior false accusation in closing argument. The defense didn’t argue J.W. was biased against Mr. Lee, or that she had a motive to lodge a false accusation. The defense simply invited the jury to infer that since she had made false accusations in the past, her story shouldn’t be given weight here. Additionally, the Supreme Court held the lie was clearly prejudicial to the State’s rape shield law excluding prior sexual behavior. The Supreme Court acknowledged this was a close call, but held Mr. Lee was still able to attack J.W.’s credibility.

Four judges filed a “concurring opinion” that the trial court erred by excluding the nature of the prior false allegation. However, the four justices considered the error “harmless.” This reasoning seems very odd, as Mr. Lee was only found guilty of two out of five charges. Had the nature of the prior complaint been before the jury, a full acquittal
may have happened. In this instance, it appears that the Washington Rape Shield statute “shielded” Mr. Lee from getting a fair trial.

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