

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA

CASE ANUHCR 2019/0005

REGINA

V

LEE CRAMP

APPEARANCES

Mrs Shannon Jones-Gittens and Ms Rilys Adams for the Crown.

Dr David Dorsett, Mr Warren Cassell, and Mr Peter McKnight for the defendant.

2019: MAY 17, 20

MAY 21

RULING

On whether a prepared statement is inadmissible as wholly exculpatory

- 1 Morley J: I am asked in a rape trial by Crown Counsel Jones-Gittens to rule that a prepared statement by the defendant is inadmissible as wholly self-serving. I have declined because it is not wholly self-serving, but mixed, promising written reasons, which are these.
- 2 The defendant is said to have raped KH¹ during the Saturday night of 23/24.05.15 in Falmouth, in her apartment. KH was a student nurse aged 22 from the US, a virgin, and Cramp aged 22

¹ The complainant will not be identified by name as she is entitled to anonymity, while this ruling is being published following the conviction of the defendant for rape on 23.05.19.

(dob 11.01.93), was a serving London police officer on holiday. They met on island on Tinder on Friday 22.05.15. Text messages on whatsapp show their mutual interest develop, with Cramp often talking about how much they would drink when they would meet, though she had explicitly said there would be no sex, and with it being expected he would stay over on her sofa, They met at Baileys supermarket in Falmouth, had a bottle of wine, and went to KH's home, where they had more wine on her balcony, KH changed into more comfortable clothing, and they began to watch a movie in her lounge.

- a. On her version, given in evidence on 16 and 17.05.19, KH took a further sip of her wine, thought it tasted strange, Cramp said he had put vodka in it, she tried another sip, and then felt dizzy. She remembers little else until she woke up next day, naked in bed with Cramp, except a few days later recalling she had fallen off the bed, banging her head, with Cramp on top of her while she was shouting no.
- b. That next day Sunday she had visible bruising on her neck, which she called 'hickeys', and with no memory of the night, she drove Cramp to his hotel, and was in further text correspondence, arranging to go to a fete. On the Sunday he was saying by text: *'I say have sex...let's go the whole way tonight'*, and on Monday said, *'Before I go I want to have sex'*, by implication meaning he was saying to her there has been no sex yet, (though she was still refusing).
- c. She never saw him again, and he went back to England on Wednesday night 27.05.15.
- d. However, on the Sunday, she was in pain, with vaginal bleeding and became conscious of pain on defecation, and with time passing into Monday and Tuesday she noticed bruising popping up on her arms and thighs, and mentioned in texting a bruise on her bottom. By Wednesday, in confusion (because inexperienced as to sexual intercourse), she was pressing Cramp for details of what had happened that Saturday night, asking: *'I was just wanting to know if you remember everything in full from when you came over and we drank because as a few days have past I've realized a few things...I've had a lot of bruises pop up and I'm in a lot of pain...It's kinda left me shaken up because I can't remember what all had*

happened. We definitely didn't have sex right?' He replied, 'No, we definitely did not, I know that much.'

- e. She pressed him further, saying, *'I do remember falling off the bed at least twice...I genuinely don't recall the entire night, like I don't even remember being bit hard enough to have the huge ass hickey I have...I just wanted clarity because I have been a bit panicked the past few days'*, to which he replied, *'sitting here thinking, I remember you getting on top of me and I was hard, you said let's do this, then you started bouncing up and down for a bit, not sure what happened after that, if we carried on or if I finished or what'*.
 - f. She then complained, *'what the fuck is wrong with us, if that happened there was no protection or anything, and we just met and you're going back to England'*, and he replied, *'I didn't cum, I'm 10000000000% sure...we definitely had sex...you jumped on top, I was hard, you put it in you, started bouncing, we then fell off the bed, that was it, no cum...it's all a big blur, but I promise you I didn't cum'*. KH then told him, *'if all this is true then you took my v-card'*, and he replied, *'well I can't give it back...just pretend it never happened...I'm about to leave and get on this aeroplane'*.
 - g. Later that Wednesday night, 27.05.15, KH went to the hospital, and on 02.06.15 was formally examined by Dr Rasheeda Gilbert Charles, where she was found to have: global erythema of the vulva; multiple shallow ulcerations to the labia majora, labia minora, introitus and vagina; purulent bloody discharge from the vagina; 4-6 ulcers around the perianal region, severe tenderness to digital examination of the vagina and rectum; and her hymen was not intact. In evidence on 17.05.19, the doctor said these injuries would require very rough sex.
- 3 Cramp was the subject of an extradition request from the UK to Antigua filed on 16.10.17. He had sight of KH's **statement, dated 02.06.15, and** he prepared a typed written response of 169 lines dated 09.01.18. In it:
- a. He admits to sexual intercourse with KH.
 - b. He says he put on a condom, which later ripped.

- c. He says that before sexual activity he drank only four glasses of wine and had a shot of vodka, while KH drank at most only three glasses of wine and a shot of vodka.
 - d. He denies spiking her drink.
 - e. He says during sexual activity KH was in control of herself, not drunk, was making full sense, she was consenting to all of what was happening, leading, the sex lasted in total 5-10 mins, and throughout there was joking, while the activity was a bit stop-start.
- 4 When interviewed by police on Antigua on 17.09.18, Cramp offered his prepared statement as his version of events and declined to comment after.
- 5 This court is aware that in the UK, from where Cramp comes, there is frequent complaint anecdotally and often in the press, well known to the police there, Cramp being a police officer, that a drug called rohypnol² (**colloquially often called 'the date-rape drug'**), is widely used, criminally, to render a woman utterly incapacitated, by spiking her drink, so that sexual intercourse, and worse, may then be inflicted on her, she has little or no memory of events the night before, and the drug **is quickly expunged from the victim's body so that it is rarely traced**.
- 6 From the evidence heard from KH, it is quite clear the issue in this case is whether Cramp drugged her. Both agree she was not drunk. So either she was drugged or she is lying about her memory loss.
- 7 Crown Counsel Jones-Gittens submits **the prepared statement is wholly 'exculpatory'**, created having read KH's **statement**, and is therefore self-serving, meaning if so it is inadmissible. Defence Counsel Dr Dorsett counters **it is 'mixed', as containing an admission to intercourse**, but offering a defence, so that it is not wholly exculpatory, meaning it is admissible. My foremost task is to decide which is it. I am sure it is mixed, for the reason Dr Dorsett offered, and furthermore because it is plainly inconsistent with the whatsapp text messages and therefore may be incriminating:

² See for example: <https://www.drugs.com/illicit/rohypnol.html>.

- a. In the texts KH was frightened they had not used protection and he did not say he had put on a condom, whereas he said he did in the statement, suggesting what he said in the statement about using a condom may be a lie to make a court think better of his behavior.
- b. In a text Cramp describes his memory as a 'big blur', suggesting he was very intoxicated, when in his statement he describes only having four glasses of wine and a vodka, which is likely wholly inconsistent with being so intoxicated, suggesting the text was a lie.
- c. In his statement, Cramp describes KH drinking at most only three glasses of wine and a vodka, which everyday experience suggests would not likely lead to such severe memory loss, at all, and in the teeth of the injuries received. In the statement, he specifically says she was in control of herself, leading, and joking, which would point to how, if true, there could be no memory loss. He finally admitted to sex on the Wednesday.
 - i. However, he sent texts after the Sunday to suggest they should have sex before he left, implying they had not, but it appears knowing they already had, and specifically denying earlier on the Wednesday they had sex on the Saturday night.
 - ii. That denial there had been no sex could only be because he knew she could not remember having sex, begging why and how could he know, as from his statement this would not arise on so little alcohol, strongly suggesting he knew she had been rendered memoryless, in turn strongly suggesting he knew he had spiked her drink.
 - iii. In short, his statement may point to how he knew he could lie to her they did not have sex because he knew from the effect of spiking her drink she would not remember, while in parallel always knowing as he said in his statement she never drank much.

8 It is plain the prepared statement, viewed alongside the texts, is arguably highly incriminating as pointing to some lies, and as containing an admission KH could not have been drunk, so that if the jury accepts she cannot remember, then they may easily conclude he drugged her. If sure he drugged her, so she had no capacity to resist or consent, he will be convicted of rape. In this context it is puzzling the Crown have thought the statement wholly exculpatory. This assessment

is quite simply wrong and shows inexperience. The statement if deployed intelligently alongside the texts is good evidence against the defendant.

9 Crown Counsel Jones-Gittens and Defence Counsel Dorsett are to be complimented on their intelligent assessment of the law on self-serving statements, running to many pages, prepared by each over the weekend. It is right that if a wholly self-serving statement, then in appropriate circumstances, of some rarity, it may be ruled inadmissible, per R v Storey 1968 52CrAppR334, R v Pearce 1979 69CrAppR365 and R v Newsome 1980 71CrAppR325. An unusual feature of the case has been, because there have been extradition proceedings, Cramp saw KH's statement before he wrote his statement, so it may have been prepared to tailor to it. Ordinarily a defendant does not see a witness statement prior to giving a statement to police. If wholly self-serving, this feature might have persuaded me to rule it inadmissible. However, if it was ever designed to tailor to KH's statement, **the tailoring failed**, as it took no account of the texts. It is a mixed statement, in the sense it contains material which may be inculpatory, along with material which may be exculpatory. If mixed, the law is plain it is admissible, per R v Duncan 1981 73CrAppR359, R v Sharp (Colin) 1988 1WLR7, and R v Gordon 2010 UKPC18 (77WIR148), noting Lord Havers in *Sharp* specifically endorsed the dictum of Lord Lane CJ in *Duncan*, who said: ***'Where a mixed statement is under consideration....the whole statement, both the incriminating parts and the excuses or explanations must be considered by them [the jury] in deciding where the truth lies.'*** In *Gordon*, at para 38, the Privy Council said: ***'Both the statement and the contents of interview were mixed statements and were thus admissible in evidence in accordance with the principle of Sharp...as a matter of fairness the prosecution should have adduced them in evidence.'***

10 In light of the above analysis, the prepared statement dated 09.01.18, and offered to the Antigua police on 17.09.18 is a mixed statement, and is therefore admissible. If it is not put into evidence by the Crown, it can be cross-examined in by the defence when questioning the interviewing officer, and who can then comment to the jury it could and should have been put into evidence by the Crown. However, as I conclude this ruling, though I cannot direct it, I expect the Crown will put it in.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

21 May 2019