

TAB 1

1



CRIMINAL LAW PRACTICE BASICS 2016

Fact Scenario

The Honourable Kimberley Crosbie
Ontario Court of Justice

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Fact Scenario for the New Criminal Lawyers Practice Series

A 23-year-old man has contacted your office seeking your advice. He is being charged with sexual assault and is being detained. He told you that the police are asking him to give them his side of the story.

The alleged facts, taken from the police synopsis, are as follows:

The complainant is a 21-year-old woman. Both the accused and the complainant attend the same university. The complainant and her roommates hosted a house party last Saturday night. A number of people were at the party. The accused was known to one of the complainant's friends but he was not known to the complainant until that evening. Her friend had introduced them but apart from that, no one else at the party recalled there being any interaction between the two.

Everyone drank at the party until about 11:00 p.m., when they left the house and went to a local bar. The complainant recalls consuming about 5 or 6 drinks before she left the house (rum and coke) and she had 2 or 3 bottles of beer at the bar. A number of the people from the party were all dancing together on the dance floor. At some point, the accused and the complainant were seen slow dancing together.

At closing time, a number of the group returned to the house, including the complainant and the accused. The party continued. At about 4:00 a.m., the complainant's boyfriend arrived at the house (he was out of town). He and the complainant shortly thereafter went up stairs to her room and fell asleep. A few people were still there at that time they went upstairs, including the accused.

The complainant's boyfriend had to get up early to go to a hockey tournament. He left around 7:30. As he was leaving, he and the complainant argued about his late arrival and early departure. She told him: "you don't pay enough attention to me". On his way out, he saw the accused stretched out of the couch. One of the roommates was cleaning up. The accused asked her if he could use the bathroom - she said yes and he went upstairs. A short while later, the roommate who was cleaning heard sounds from upstairs. It sounded like someone was having sex.

A short time later, maybe 15 minutes, she saw the accused come downstairs quickly, grab his jacket and leave. He seemed to be in a rush. She heard the complainant crying and went upstairs. The complainant told her that he had come into her room and started having sex with her. She told her roommate that she had gone back to sleep after her boyfriend had left and that she woke up to find the accused on top of her, forcing intercourse. She said she told him to stop but he wouldn't - she struggled and eventually pushed him off. She was sobbing the whole time she told her roommate about this.

Her roommate suggested she go to the hospital. The complainant called 911 and spoke with someone. Instead of having an ambulance go and get her, her and her roommate left together in a cab and went to a sexual assault care and treatment center at the local hospital. A sexual assault evidence kit was administered. She was treated and the nurse who examined her discussed whether she wanted to call the police. She hesitated but said she wanted to. The police were called. Two officers met with the complainant at the hospital and then took her to the station where she provided a full statement.

The name of one of the officers is familiar to you. You remember recently reading an article about him being charged with failing to provide a breath sample but you think the case was withdrawn.

The accused was picked up and arrested a few hours later, sometime in the early afternoon.