

Intimate Partner Sexual Abuse:

DISCUSSION GUIDE FOR FACULTY

STATE V. CARLOS FIGUEROA

A new statute in your jurisdiction, modeled upon a federal rule, permits evidence of prior bad acts under the following circumstance:

Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

- a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.
- b) For purposes of this rule, "offense of sexual assault" means a crime under Federal law or the law of a State that involved—
 - 1) any conduct proscribed by chapter 109A of title 18, United States Code;
 - 2) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;
 - 3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;
 - 4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or
 - 5) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

The defendant argues that the statute does not apply to an ongoing sexual relationship between a married couple, but to “classic sexual assault”; the statute should be limited to situations “where there is purported ambiguity about the defendant’s intention, not about the state of mind of the victim.” A spouse’s apprehension stemming from prior domestic violence does not render every sexual encounter a “rape.”

Q1.

Should evidence of the defendant’s prior sexual assault of Ms. Figueroa be admitted on the issue of whether she consented to perform oral sex upon her husband on the date in question?

The statute expressly states that the evidence of prior sexual assaults “may be considered for its bearing on any matter to which it is relevant.” Contrary to the defendant’s argument, consideration of such evidence is not limited to the issue of the defendant’s state of mind. Evidence of the prior assaults is highly probative of Ms. Figueroa’s state of mind at the time of the alleged assault, and relevant to assessment of Mr. Figueroa’s defense of consent.

Prior Bad Acts:

There is no evidentiary rule in your jurisdiction specifically governing consideration of prior sexual assault. Evidence of prior physical assaults of Ms. Figueroa, as well as her husband's threats, has been proffered on the question of whether Ms. Figueroa was coerced into performing oral sex. Defendant contends that the evidence must be excluded as impermissible "propensity" evidence, introduced solely to establish that he was acting in conformity with prior conduct on the date in question.

The governing statute is a catch-all provision concerning character evidence:

Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes.

(a)-- Character evidence generally.--Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1)-- Character of accused.--In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404(a)(2), evidence of the same trait of character of the accused offered by the prosecution;

(2)-- Character of alleged victim.--In a criminal case, and subject to the limitations imposed by Rule 412, evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor;

(3)-- Character of witness.--Evidence of the character of a witness, as provided in rules 607, 608, and 609 .

(b)-- Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial. *[Adopted 1975; last amended 2000.]*

[over]

Q2.

Should evidence of defendant's prior physical, sexual and verbal aggression against his wife be admitted or excluded?

Under this provision, evidence of prior sexual assaults is not admitted to establish the victim's state of mind, but rather to establish the defendant's intent at the time of the alleged assault. It is difficult for juries to parse through evidence of both consensual and nonconsensual sexual contact between a defendant and the complainant in an intimate partner sexual abuse case. Evidence of prior sexual assaults can assist the jury in determining the defendant's state of mind or intent on the occasion in question. Thus it would be appropriate to admit such evidence in this case.