

Intimate Partner Sexual Abuse:

CRIMINAL CASE STUDY

STATE V. CARLOS FIGUEROA

Carlos Figueroa has been charged with sexual assault in the first degree following an alleged attack on his estranged wife, which took place in his car. Figueroa argues that the encounter, which did not involve overt force or violence, was consensual.

The prosecutor seeks to introduce evidence of Figueroa's history of prior sexual assaults and abuse of his wife in order to establish that Ms. Figueroa lived in such fear of the defendant that the continual specter of his violence placed her under duress. The defense has objected, arguing that the prejudicial impact of such evidence would far outweigh the probative value.

At issue in particular is the meaning of Figueroa's statement to his wife, "You'd better do me or else."

Rosa Figueroa, a native of the Dominican Republic, has been married to Carlos Figueroa for 15 years. The couple had four children together. Rosa came to the attention of the police following an apparent suicide attempt; she was on a ledge outside her fifth floor apartment for approximately two hours before a neighbor called for assistance. She was admitted for psychiatric evaluation.

During the course of her evaluation, she disclosed that she was on the ledge in an effort to escape her husband. Throughout their marriage he had dictated sexual acts for her to perform, beating her if she did not comply. These acts included not only conduct with him that made her uncomfortable, such as oral sex, but also conduct involving third parties. On prior occasions he had forced her to have sexually explicit conversations with his co-worker, to engage in three-way sexual encounters with a woman with whom he was having an affair, and forced her to allow him to videotape her while he directed her to enact sexual activities before the camera. He had also threatened to rape her sister if Ms. Figueroa did not submit to him first. He had warned her that if she tried to dial for help, she would not live to complete the call.

On the afternoon when she fled onto the ledge, she had refused to call his co-worker to engage in sexually explicit conversation. There was no phone in the room she was in, and there were heavy dumbbell weights by the door. Ms. Figueroa feared that he would use these to attack her. Thus, she felt her only avenue of escape was through the window.

Although hospital personnel had assisted her in finding secure shelter, to which she had been discharged, unresolved issues concerning the couple's children, such as child support, visitation and custody, led to their continued contact. Defendant had intimidated one of the children into providing him with a telephone contact number, and had repeatedly phoned the family. During a

visitation exchange of their children, defendant managed to get Ms. Figueroa alone in the car, drive her to a secluded area, and allegedly force her to perform oral sex upon him.

When he stated to Ms. Figueroa, “You better do me or else,” she took this to mean that if she did not do as he demanded, he would, at a minimum, beat her and at worst carry through on one of his previous threats, such as raping her sister. Ms. Figueroa called her sister upon returning to her home, and went immediately to the police.

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?

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.*]

Q2.

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