

continued to verbally protest, saying "No, I gotta go, let me go," in a "scolding" manner.

Ten or fifteen more seconds passed before the two rose to their feet. Appellant disregarded the victim's continual complaints that she "had to go," and instead walked two feet away to the door and locked it so that no one from the outside could enter. The victim testified that she realized at the time that the lock was not of a type that could lock people inside the room.

Then, in the victim's words, "[appellant] put me down on the bed. It was kind of like—he didn't throw me on the bed. It's hard to explain. It was kind of like a push but no. . . ." She did not bounce off the bed. "It wasn't slow like a romantic kind of thing, but it wasn't a fast shove either. It was kind of in the middle."

Once the victim was on the bed, appellant began "straddling" her again while he undid the knot in her sweatpants. . . . He then removed her sweatpants and underwear from one of her legs. The victim did not physically resist in any way while on the bed because appellant was on top of her, and she "couldn't like go anywhere." She did not scream out at anytime because, "[i]t was like a dream was happening or something."

Appellant then used one of his hands to "guide" his penis into her vagina. At that point, after appellant was inside her, the victim began saying "no, no to him softly in a moaning kind of way . . . because it was just so scary." After about thirty seconds, appellant pulled out his penis and ejaculated onto the victim's stomach.

Immediately thereafter, appellant got off the victim and said, "Wow, I guess we just got carried away." To this the victim retorted, "No, we didn't get carried away, you got carried away." The victim then quickly dressed, grabbed her school books and raced downstairs to her boyfriend, who was by then waiting for her in the lounge.

Once there, the victim began crying. Her boyfriend and she went up to his dorm room where, after watching the victim clean off appellant's semen from her stomach, he called the police.

Defense counsel's cross-examination elicited more details regarding the contact between appellant and the victim before the incident in question. The victim testified that roughly two weeks prior to the incident, she had attended a school seminar entitled, "Does 'no' sometimes mean 'yes'?" Among other things, the lecturer at this seminar had discussed the average length and circumference of human penises. After the seminar, the victim and several of her friends had discussed the subject matter of the seminar over a speaker-telephone with appellant and his roommate Earl Hassel. The victim testified that during that telephone conversation, she had asked appellant the size of his penis. According to the victim, appellant responded by suggesting that the victim "come over and find out." She declined.

When questioned further regarding her communications with appellant prior to the April 19, 1988 incident, the victim testified that on two other occasions, she had stopped by appellant's room while intoxicated. During one of those times, she had laid down on his bed. When asked whether she had asked appellant again at that time what his penis size was, the victim testified that she did not remember.

Appellant took the stand in his own defense and offered an account of the incident and the events leading up to it that differed only as to the consent involved. According to appellant, the victim had begun communication with him after the school seminar by asking him of the size of his penis and of whether he would show it to her. Appellant had suspected that the victim wanted to pursue a sexual relationship with him because she had stopped by his room twice after the phone call while intoxicated, lying down on his bed with her legs spread and again asking to see his penis. He believed that his suspicions were confirmed when she initiated the April 19, 1988, encounter by stopping by his room (again after drinking) and waking him up.

Appellant testified that, on the day in question, he did initiate the first physical contact, but added that the victim warmly responded to his advances by passionately returning his kisses. He conceded that she was continually "whispering . . . no's," but claimed that she did so while "amorously . . . passionately" moaning. In effect, he took such protests to be thinly veiled acts of encouragement. When asked why he locked the door, he explained that "that's not something you want somebody to just walk in on you [doing]."

According to appellant, the two then lay down on the bed, the victim helped him take her clothing off, and he entered her. He agreed that the victim continued to say "no" while on the bed, but carefully qualified his agreement, explaining that the statements were "moaned passionately." According to appellant, when he saw a "blank look on her face," he immediately withdrew and asked "Is anything wrong, is something the matter, is anything wrong?" He ejaculated on her stomach thereafter because he could no longer "control" himself. Appellant testified that after this, the victim "saw that it was over and then she made her move. She gets right off the bed . . . she just swings her legs over and then she puts her clothes back on." Then, in wholly corroborating an aspect of the victim's account, he testified that he remarked, "Well, I guess we got carried away," to which she rebuked, "No, we didn't get carried, you got carried away."

After hearing both accounts, the jury convicted appellant of rape and indecent assault. . . . Appellant was then sentenced to serve a term of imprisonment of one to four years for rape and a concurrent term of six to twelve months for indecent assault. . . .