

indecent assault does not include the element of "forcible compulsion" as does the crime of rape. The evidence described above is clearly sufficient to support the jury's conviction of indecent assault. "Indecent contact" is defined as "any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person." 18 PCSA section 3101. Appellee himself testified

to the "indecent contact." The victim testified that she repeatedly said "no" throughout the encounter. Viewing that testimony in the light most favorable to the Commonwealth as verdict winner, the jury reasonably could have inferred that the victim did not consent to the indecent contact. Thus, the evidence was sufficient to support the jury's verdict finding Appellee guilty of indecent assault.

Questions for Discussion

1. Why does the Pennsylvania Supreme Court rule that the evidence was insufficient to hold Berkowitz legally liable for rape? Can you explain why the court rules that Berkowitz was properly convicted of indecent assault?
2. What facts support the court's finding that Berkowitz did not use "forcible compulsion" in his sexual intercourse with the victim? Are there facts supporting the contention that Berkowitz did rely on "forcible compulsion"?
3. Why did the Pennsylvania Supreme Court opinion fail to highlight that in the past, the victim had made sexually provocative remarks to Berkowitz and had visited his dorm room? Is it significant that the victim's boyfriend reported the rape immediately after the victim informed him that she had sexual intercourse with Berkowitz?

Was M.T.S. guilty of rape?

In the Interest of M.T.S., 609 A.2d 1266 (N.J. 1992). Opinion by: Handler, J.

Issue

Under New Jersey law a person who commits an act of sexual penetration using physical force or coercion is guilty of second-degree sexual assault. The sexual assault statute does not define the words "physical force." The question posed by this appeal is whether the element of "physical force" is met simply by an act of nonconsensual penetration involving no more force than necessary to accomplish that result. . . . The factual circumstances of this case expose the complexity and sensitivity of those issues and underscore the analytic difficulty of those seemingly straightforward legal questions.

Facts

On Monday, May 21, 1990, fifteen-year-old C.G. was living with her mother, her three siblings, and several other people, including M.T.S. and his girlfriend. A total of ten people resided in the three-bedroom town-home at the time of the incident. M.T.S., then age seventeen, was temporarily residing at the home with the permission of C.G.'s mother; he slept downstairs on a couch. C.G. had her own room on the second floor. At approximately 11:30 p.m. on May 21, C.G. went upstairs to sleep after having watched television with her mother, M.T.S., and his girlfriend. When C.G. went to bed, she was wearing

underpants, a bra, shorts, and a shirt. At trial, C.G. and M.T.S. offered very different accounts concerning the nature of their relationship and the events that occurred after C.G. had gone upstairs. The trial court did not credit fully either teenager's testimony.

C.G. stated that earlier in the day, M.T.S. had told her three or four times that he "was going to make a surprise visit up in [her] bedroom." She said that she had not taken M.T.S. seriously and considered his comments a joke because he frequently teased her. She testified that M.T.S. had attempted to kiss her on numerous other occasions and at least once had attempted to put his hands inside of her pants, but that she had rejected all of his previous advances. C.G. testified that on May 22, at approximately 1:30 a.m., she awoke to use the bathroom. As she was getting out of bed, she said, she saw M.T.S., fully clothed, standing in her doorway. According to C.G., M.T.S. then said that "he was going to tease [her] a little bit." C.G. testified that she "didn't think anything of it"; she walked past him, used the bathroom, and then returned to bed, falling into a "heavy" sleep within fifteen minutes. The next event C.G. claimed to recall of that morning was waking up with M.T.S. on top of her, her underpants and shorts removed. She said "his penis was into [her] vagina." As soon as C.G. realized what had happened, she said, she immediately slapped M.T.S. once in the face, then "told him to get off [her], and get out." She did not