

# Star News (Wilmington, NC)

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## When 'No' is not Enough / Lack of Evidence can Make 'Date' Rape Difficult to Prove

By John DeSantis, Staff Writer

Cases involving acquaintance or "date" rape have always posed challenges because physical evidence is often minimal or nonexistent, prosecutors acknowledge.

The result is that in some cases – no one can say for sure how many – victims who heeded long-standing encouragement to report such crimes may see no prosecution, lenient plea bargains or no arrest at all for their accused attackers. The realization hits home hard for victims and their families, who have been taught that if they just came forward the criminal justice system would work for them.

A simple "no" is supposed to be enough to ward off an unwanted invitation to sex, but it is not enough to support prosecution when that "no" is violated.

"The reality is that the system still has a long way to go in validating the expectations that victims may have," said Lillian Salcines, an assistant district attorney who screens rape cases in New Hanover County.

### What you can prove

A biannual survey by the U.S. Centers for Disease Control and Prevention on youth and crimes involving sex notes that as of 2003, nearly 12 percent of high school girls reported they had been raped or sexually assaulted at some time in their lives, as did nearly 7 percent of high school boys.

A Pender County investigation of a high school junior's accusations of rape by a fellow student is a case in point, local prosecutors say. Before they lodge charges in the case, they want more evidence from detectives.

In that case, the alleged offender and victim know each other. The two communicated by cell phone, which the boy's attorney says clearly demonstrates the girl was "pursuing" his client. Little physical evidence exists to support the girl's claim that she said "no" to sex. The accuser didn't discuss the incident with anyone for three weeks. It was only reported to authorities after she told a friend, who told school administrators.

Both accuser and accused, in statements to a Pender County Sheriff's Office investigator, acknowledge that intercourse occurred. The difference: The accused and his parents maintain what happened was consensual.

All those factors together point to big problems for prosecutors and police.

"It is not about what happened; it is about what you can prove," said Temple Barrett, an assistant district attorney who is evaluating the case. "If I elect not to proceed with a charge, it does not mean I do not believe the victim. It is all about evidence."

Investigators are still seeking evidence that will support a prosecution and say that it's too early to call the case closed.

Interviews with advocates and attorneys in major U.S. urban centers and in smaller communities support the contention that the challenges faced by prosecutors in Pender are not unique to that case or to North Carolina.

### **The 'CSI' factor**

Dawn Wilsey, deputy director of the Washington-based American Prosecutors Research Institute's child abuse prevention program and a former Memphis, Tenn., prosecutor, said demands by jurors for the kind of evidence they see on television programs like CSI or Law & Order exists in all kinds of cases.

But she and other prosecutors acknowledge that in cases of acquaintance rape, which often boil down to the word of a victim against the word of the suspect, the so-called CSI factor can be especially troublesome.

"Juries are expecting more forensic testing in many cases where there isn't forensic evidence to test," Ms. Wilsey said. "If the assailant wore a condom, if the assailant did not ejaculate ... It doesn't mean you don't believe them. In most cases you will find corroborative or forensic evidence of one sort or another. It simply means that you may not be able to prove the case beyond a reasonable doubt."

Amy Feath, director of New Hanover County's Rape Crisis Center, which assists and advocates for victims of sexual violence, has seen the frustration victims experience when police or prosecutors decline to pursue a case or when plea bargains result in far lesser charges than expected.

"People are so into those shows, to your average Joe Citizen it is all that drama, they believe you can get a pinpoint," Ms. Feath said. "On CSI they have everything they have at their fingertips."

Even if law enforcement and the district attorney's office believe a victim, Ms. Feath said, a prosecution is difficult without physical injuries or signs of force used against the victim.

"Is a victim going to press forward?" she asked. "She wants to see the perpetrator hung from the nearest flagpole, but that is not the reality of the circumstance, and it is further traumatizing."

## **No means no**

Acquaintance or date rape occurs when the perpetrator of an unwanted sexual act is known to the victim or is even dating the victim. While physical force may be used in some cases, the “weapon” of choice is often coercion or insistence.

Victims may put up resistance verbally or physically but sometimes will just “freeze” after “no” has been ignored, advocates and law enforcement officers say. Police and prosecutors say the aggressor in the sexual act has the responsibility to stop at “no.”

Educational programs in area high schools and even middle schools, sponsored by prosecutors and advocacy groups, spread the message that date rape is unacceptable. Students are also told that if they are a victim or know that a friend is a victim, someone in authority should be told.

Safe Haven of Pender County, a nonprofit agency that administers aid and counseling for victims of sex crimes and domestic violence, has operated an intensive education program in schools for more than three years.

Executive Director Ted Proukou said the numbers show the message is getting out.

“Last year we taught 385 classes and over 8,000 students ranging from kindergarten all the way through 12th grade, curricula designed for the age groups,” Mr. Proukou said. “We know these efforts have raised the awareness of what constitutes sexual assault, a date rape.”

Long-term tracking to verify cause and effect is not yet possible because the program just recently began. But according to Safe Haven’s statistics, only six disclosures of criminal victimization were made to them in 2002. In the 2003-04 school year, when the program began, 22 disclosures were made.

While the numbers do not show whether all or most of the incidents disclosed involved acquaintance rape, advocates say they suspect that is the case.

Acquaintance rape is consistently cited in statistics from the CDC and several other federal studies as the most common form of rape, with an overwhelming number of victims younger than 18.

## **Can I talk to you?**

An increase in disclosures as the result of an educational program in schools should be expected, said Juley Fulcher, director of Break The Cycle, a Washington, D.C.-based organization that provides educational programs and seeks to raise awareness of sexual violence against teens nationwide.

“We have long known that when we do a public awareness campaign or there is a tagline at the end of a TV show, we get huge spikes in calls to national hot lines,” Ms. Fulcher said. “When we

go to schools or youth groups, inevitably at least one student comes up to us at the end of the class and asks, ‘Can I talk to you in private.’”

When a young person – or anyone who is a victim – speaks with an advocate or calls a hot line, the choice of whether to officially report an acquaintance rape or any other type of sexual assault lies with the victim.

But in some cases, such as when school authorities are told, reporting to law enforcement agencies is mandatory..

The search then begins for evidence necessary to substantiate a criminal charge. Even if charges and an arrest result, it’s ultimately up to the prosecutor to decide whether the case moves forward.

The makeup of the jury pool in a given community may heavily influence how a prosecutor views the case. Lynn Hecht Schafran, a New York attorney, is director of the National Judicial Education Program at Legal Momentum, a group that advocates equality for women and men. In programs designed to teach judges about the difficulties associated with rape cases, Ms. Schafran stresses how myths and misconceptions about rape can color how the judicial system helps victims or makes things worse, as well as the importance of holding perpetrators accountable.

A specialist called a forensic sexual assault expert, who can identify evidence on a victim’s body outside the genital area to help build a case, can be helpful to prosecutors, Ms. Schafran said. To make best use of such experts, she said, the victim’s entire body must be a crime scene of sorts, where signs of rape such as bruising or misplaced hairs – anything that corroborates a statement the victim has made about the act – must be located during initial examination.

Ultimately, issues of prosecution in acquaintance rape cases would not be an issue if acquaintance rape did not exist.

Respect for one’s self and for one’s partner is a good place to start, said Brian Irvin of the national men’s awareness organization Men Can Stop Rape.

The organization’s program is hosted in schools throughout the United States, and Mr. Irvin said one of the biggest points he makes to young men is their responsibility to partners. There’s more to determining whether a sexual encounter is consensual than the word “no,” he said, even if a word isn’t spoken.

“Silence is not consent,” he said.

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## **DIVISION OF PERPETRATORS**

According to this study conducted July 2004 through May 2005 the majority of sexual incidences occurred with someone the victim knew.

- Acquaintance/Date: 54%
- Relative: 14%
- Stranger: 14%
- Drug induced: 9%
- Statutory: 9%

*Source: New Hanover County Rape Crisis Center*

Estimates are that these incidents, a total of 30 for this period, are heavily represented in the 13-17 age range.

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