

Case Brief

Crim, Sexual offenses, forcible rape

Hughes, 3/7/15

Identity of Case

In re John Z, California Supreme Court 2003, page 471

Summary of Facts/Procedural History

Victim was at a house party with her boyfriend and another adolescent, all about the same age. She (maybe, and definitely for the sake of argument) consented to heavy petting and fingering. Then both boys had sex to her, which she did not consent to. One of the defendants plead guilty to sexual battery, the remaining defendant appeals conviction of rape on a theory that continued penetration after consent is withdrawn is not rape or not as high a degree of rape. Judgment of conviction affirmed.

Statement of the Issue

Is it rape if consent is initially given then withdrawn?

Holding

Yes.

Reasoning

The argument against the conviction was based on older notions of rape law, which were justified by the "outrage" that women felt when they were penetrated against their will. Supposedly, although they had a right to be outraged if penetration continued after they withdrew consent, they could not be as outraged as in the first scenario and it was therefore less of a crime.

The court dismisses this as complete bull, and says that it is a crime. Since the evidence was sufficient to support a conviction of rape, and the withdrawal of consent makes it rape, the judgment is affirmed.

Evaluation

Dissent: agrees that it is rape after withdrawal of consent but challenges the sufficiency of the evidence. The whole scenario was a mess, and it really isn't clear what she was consenting to, there was evidence either way and even evidence that she did not consent to the initial penetration (fingering). The majority assumes that she does because the evidence for withdrawal of consent later is much stronger than the evidence for no initial consent, and the result is the same. Allows the majority to settle an important question of law.