Experts: Small percentage of rapes lead to trials, fewer still to convictions

By: EMMA COURT | February 3, 2015

Ithaca, N.Y. — Prosecutors did not get a rape conviction in People v. Peter Mesko, the case of a former Cornell student accused of raping a fellow student while she was asleep in Collegetown.

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But Mesko was convicted last week of both sexual abuse and burglary (ithacavoice.com/2015/01/former-cornell-student-peter-mesko-convicted-burglary-sexual-abuse/). Those convictions — even with the jury unable to break a deadlock on the rape charge — ensure that Mesko will face a greater punishment than the vast majority of reported perpetrators in rape cases, experts say.

Mesko walked out of court on Friday, though he will serve at least two years in jail on the burglary and sexual abuse charges.
Most rape cases don’t even make it to court — only three percent, including unreported ones, are referred to prosecutors, according to the Rape Abuse and Incest National Network. (https://www.google.com/url?q=https%3A%2F%2FRAINN.org%2Fget-information%2Fstatistics%2Freporting-rates&sa=D&sntz=1&usg=AFQjCNEcMzJqGpksmbXHvzsRtRjmEueXIA)

Rape cases are rarely reported to police and, when they are, it’s both uncommon for an arrest to be made as well as for the prosecution to move the case forward.

Including unreported rapes, only about 2 percent of those accused of rape will serve a prison sentence, according to RAINN.

**Expert: The case against Mesko was easier to prosecute than most reported rapes**

Rape cases are “so difficult” to prosecute that the state often doesn’t move forward with them, according to Daniel Manne, a lawyer who has worked on sexual assault cases and represented women bringing Title IX sexual assault complaints against universities.

Manne, who is also a postdoctoral student at Cornell, says that what’s unusual about the case also explains why it made it farther than most sexual assault cases do.

While about two out of three sexual assaults are perpetrated by someone known to the victim, or acquaintance rape, jurors often believe that only strangers unknown to the victim could be rapists, Manne noted. However, Mesko and the victim in this case did not know each other.

“Stranger rape is the exception, not the rule, but it’s certainly a lot easier to prosecute,” Manne said.

Moreover, the defense’s legal strategy was affected by state law, which doesn’t allow a consent defense when the victim was unconscious, according to Manne.

Because the victim was asleep during the time of the alleged crime — a little before 5 a.m. — arguing the encounter was consensual, a common defense in such trials, was not possible, Manne said.
ADA Wendy Franklin holds up a photo of Peter Mesko that was submitted as evidence in the trial. (Jeff Stein/Ithaca Voice)

Common defenses in rape cases not available to Mesko’s attorneys

This case is also “fairly different” from most because of the type of defense Mesko’s lawyers are using, according to Manne. Manne says that the defense commonly argues either that the sexual encounter was in fact consensual, or that while a rape did occur, that the defendant is not the right person.

Mesko's attorneys, however, argued that Mesko was too drunk to have perpetrated the assault, and cited a lack of DNA evidence and witness testimony that he was actually asleep elsewhere.

Another unusual facet of the case was that the victim’s girlfriend was able to take photographs of Mesko after the alleged rape, which were then allegedly used to identify Mesko from the Cornell Wrestling website.

“This sort of represents the almost ideal case, in terms of evidence and facts, for the state to go forward,” Manne said.

DNA evidence not necessary for a conviction

Forensic scientists testified in the Mesko trial that while traces of male DNA were found on clothing samples that were tested, there was not enough to make an identification.

Elizabeth Brundige, an assistant professor at the Cornell Law School, said that DNA evidence is “not necessary for a conviction.”

“While DNA evidence can be a powerful tool in rape cases, it is one piece of evidence among others,” Brundige said.
“In many rape cases, DNA evidence is unavailable. Too much time may pass before evidence is collected, the DNA may be washed away, there may be problems with the way the evidence was handled and stored, or the perpetrator may not leave any or enough behind. In those cases, other types of evidence, including testimonial, photographic, and physical evidence, can all be used to establish that an accused person committed rape.”

Brundige said prosecutors in rape cases, like in other criminal cases, must convince the jury beyond a reasonable doubt that the accused perpetrated the crime.

Still, she said this can be “especially difficult” in rape cases because of the sensitive nature of the crime and misperceptions about rape.

“A successful conviction requires actors and institutions at all stages of the criminal justice process to be totally proactive, coordinated, well-resourced, and sensitized to the experiences of rape survivors,” Brundige said.

“Yet the reality is that there are many points at which our criminal justice system too often lets survivors down.”

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