

Alexander Vantreece and his ex-wife with whom he fathered a child, both lived in Fargo, North Dakota in August 2005. Vantreece was visiting his ex-wife when she laid down in a bedroom to rest after staying up late the night before tending to their infant child. She pretended to be asleep when he entered the room and laid down beside her. After getting up and lying down three times, he pulled down her pants and proceeded to have intercourse with her while she continued feigning being asleep.

Afterwards she washed her hair but didn't shower, explaining later that she didn't want to "wash away all the evidence." She then went to a hospital where she reported being raped by Vantreece. She was examined and swabs were taken for evidence.

Following an investigation by the Fargo Police Department, Vantreece was arrested and charged with raping his ex-wife for force or the threat of force.¹

During Vantreece's trial his ex-wife testified that she was awake the entire time he was in the bedroom. She also testified that she did not attempt to resist his advance or flee from the room, and she never asked him to stop. During her cross-examination she further testified:

Q: Now, at any point did Alex hold you down and make you –

A: No.

Q: – do this with him?

A: No. ...

...

Q: He never forced you to – to lay there?

A: No. I chose to lay there ...

Q: He didn't threaten you in any way? ... Alex never did threaten you this day, did he?

A: No. ...

Q: He didn't hold your hands back, anything like that?

A: No. I was sleeping.

Q: Well, you were pretending to be sleeping?

A: Yeah.² (§21)

The jury convicted the 58-year-old Vantreece, and in October 2006 he was sentenced to 12 years imprisonment to be followed by 5 years of conditional release.

Vantreece appealed on the single issue that there was insufficient evidence to support his conviction of forcibly raping his ex-wife when no force was involved.

The North Dakota Supreme Court issued its decision on July 25, 2007. (*State v. Vantreece*, 2007 N.D. 126 (N.D. 07/25/2007))

The Court explained that the statute Vantreece was charged with violating is intended for a situation where "a woman is overpowered by violence or threat of violence. The serious nature of these criminal acts is underscored by the legislature classifying them as class AA felonies, carrying a potential sentence of life imprisonment without parole. (§18) ... To convict, the State had to show Vantreece exerted force upon the complainant which compelled her to submit to having sex with him. In the absence of force or threats of death or serious bodily injury, there was no crime ... It was not sufficient to prove Vantreece committed this crime with evidence that the complainant acquiesced in a sexual act with him ... without protest or resistance of any kind." (§21)

Rape Conviction After Consensual Sex Tossed

By JD Staff

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"The record ... is entirely devoid of any showing that Vantreece ... compelled her to submit to having sex with him."

Yet, the Court noted, "The record evidence in the case is entirely devoid of any showing that Vantreece exerted physical action or force against the complainant which compelled her to submit to having sex with him." (§22)

The Court then cited two factually similar cases. The first was a 1987 Texas case in which a man was convicted of raping a woman who pretended to be asleep while he had sex with her. The Texas Court of Appeals reversed his conviction because there was insufficient evidence to support he exerted the force necessary to constitute rape under the statute. (*Jiminez v. State*, 727 S.W.2d 789, 792 (Tex. Ct. App. 1987))

The second case was a 1987 Michigan case of a man convicted of sexually assaulting a woman who woke up to find his hand on "her genital area outside her underwear." The man immediately left after she awoke, but he was later apprehended. The Michigan Supreme Court reversed his conviction because there was no evidence the man used any "force or coercion" when he touched the woman, which the statute required for conviction. (*People v. Patterson*, 428 Mich. 502, 410 N.W.2d 733, 734 (1987))

The Court iterated that during the incident involving Vantreece and his ex-wife, he "did not utter any threats and did not exert any force to hold her down or to restrain her from moving or fleeing. Her testimony shows that

although Vantreece had sex with her, it was accomplished without resort to force or threats to compel her submission." (§26)

Since Vantreece's wife admitted she didn't resist his sexual advance in any way and he didn't threaten or force her to participate, the Court decided that "there is not substantial evidence upon which the jury could reasonably find that Vantreece compelled the complainant to submit to a sexual act with him in violation" of the law. (§28)

Vantreece's conviction was reversed by the Court's 3-2 majority. Since it was based on insufficient evidence that the sex between his ex-wife and him wasn't consensual, they ordered the trial court to enter a judgment of acquittal, thus barring his retrial.

The Court's two women members dissented, based on their belief that Vantreece exercised the amount of force required by the rape statute. They argued that because Vantreece thought his ex-wife was asleep, she "was compelled to have intercourse solely by virtue of the physical action of Vantreece forcing his penis into her vagina." (§48)

In his concurring opinion, Justice Daniel J. Crothers explained the flaw in the dissenters reasoning. He wrote, "The 'force' that must be proven is not 'physical action' standing alone, as suggested by the dissent. (§35) ... the 'force' must be that which 'compels the victim to submit' to the sexual act. ... the facts in this record do not provide sufficient evidence upon which the jury could have found Vantreece's conduct forced the victim to submit ..." (§37)

Vantreece was subsequently released after 10 months wrongful imprisonment.

Endnote:

1. N.D.C.C. § 12.1-20-03(1)(a) provides:

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:

a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being.

2. All paragraphs refer to *State v. Vantreece*, 2007 N.D. 126 (N.D. 07/25/2007)

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