

court. The defendant was a good student and has been employed and has good employment prospects. The defendant has no criminal record. Under the ordinary sentencing guidelines, there would be a presumption that this defendant should be sentenced to probation.

However, the mandatory sentencing guidelines have already been challenged and have been found constitutional by the appellate courts. If the Court would do as defendant asks, the sentence would be appealed, the sentence would be reversed, and the defendant would be sentenced to the Department of Corrections. Because the constitutionality of the mandatory sentencing guidelines have already been ruled on by higher Courts, this Court will not go against that precedent, and defendant's first motion is denied.

With respect to defendant's second motion, and particularly as to paragraph 5, the Court grants that motion and finds the defendant not guilty of Count III. After reconsidering the evidence, the Court finds the People did not prove the defendant guilty beyond a reasonable doubt of Count III for several reasons.

First, the Court does not find the testimony of the C.J.V. credible. Her testimony was not supported by the evidence. She claimed she woke up and the defendant was on top of her, holding a pillow over her face, and was putting his penis in her vagina. The People never identified the pillow held over her face. The only pillow shown in the photographic evidence was the pillow attached to the arm of the sofa. The sofa itself did not appear to be a full-sized sofa. It was a small sofa, which would require an average-sized person to bend their legs to lie upon it. C.J.V. testified her sweatpants and underwear were pulled down around her thighs. The position of her pants as well as the size of the sofa would make the act of sexual intercourse very difficult.

Later that morning C.J.V. went to the hospital and submitted to a sexual assault

examination. The purpose of the examination was to collect any evidence of a sexual assault, including the presence of any semen. C.J.V. had not bathed or showered after the alleged assault. The DNA evidence at trial was that there was no semen from the defendant found on her or in her. The physical and scientific evidence presented does not support C.J.V.'s version of events.

C.J.V. never complained of the digital penetration. Her testimony was that she did not remember any of it. It was the defendant who admitted he placed his finger in her vagina. He testified that it was done with the consent of C.J.V. His testimony was consistent with prior statements he had made to other witnesses and the police.

The People contend that C.J.V.'s lack of memory as well as her intoxication proves she was unable to consent to the sexual act. However, the evidence is otherwise. The evidence is that the C.J.V. drank "some" 99 Shooters, which is some type of alcoholic drink. She gave at least two of the 99 Shooters to the defendant. There is no evidence of how much alcohol she drank. At some point in the evening, she got into the swimming pool and became sick. She was helped out of the pool and laid by the side of the pool. She had no more alcohol to drink the rest of the evening or early morning hours. After lying by the side of the pool, she moved away from the pool and close to a wall, where she continued to feel sick and vomited. The hosts of the party wanted her to leave.

C.J.V. was able to make decisions at this time. She did not want to go home, so she left with some friends and the defendant and rode to a friend's house. She decided not to get out of the car immediately, so she laid in the car for a while. She did not vomit in the car. She went into the house, where she laid on the sofa. A trash can was placed by the sofa so she could use it if she needed to vomit. She must have been aware of what was happening at this time, otherwise

she would not have known about the trash can to use. She did not vomit at the friend's house. Her friends were unconcerned enough about her condition that they left her with the defendant and went into an adjoining bedroom. They did not check on her again.

The defendant testified he left the party in the same car as C.J.V. They were left alone in the room in the basement. Every so often he would speak to C.J.V. She always responded to him. The defendant decided to sit on the sofa with C.J.V. He sat with her legs upon his lap. He started to rub her thigh and asked if this was fine. She responded that it was. He continued to move up her thigh and eventually inserted his finger into her vagina. He asked her several times during the process if this was fine, and she always responded that it was.

The People have the burden of proving each and every element of an offense beyond a reasonable doubt. The People failed to prove that the digital penetration was without the consent or that C.J.V. was unable to consent. The Court reconsiders the evidence, changes its verdict of guilty, and finds the defendant not guilty of Count III. The defendant is released from custody, and bond is discharged.

Entered: _____

Nunc Pro Tunc 1/3/22

Judge

CC: SAO
Def
ACSIII