

# The most challenging evidence of all

*Are testimonies in sexual trials less accurate if the complainant was intoxicated during the offence? Heather Flowe and Melissa Colloff consider this important matter*

**A**stonishing numbers of people are sexually victimised every year. In England and Wales, a total of 473,000 people per year are victims of sexual offenses on average and pro rata numbers are evidenced in Ireland. Sexual offenses are among the most difficult to investigate and prosecute, with considerable attrition occurring at every stage of the legal process. One factor that impedes case investigations and prosecutions is the victim having been alcohol-intoxicated during the attack. The majority of victims are alcohol-intoxicated during rape and sexual assault, with estimates of victim intoxication rates running as high as



80%. Criminal investigators are often uncertain as to how to proceed in these cases. Is the complainant's testimony going to be reliable?

Testimonial concerns are acute in rape. Firstly, there is considerable evidence from surveys and mock jury studies indicating that victims of rape are judged harshly and blamed for the incident if they were alcohol-intoxicated during the attack, regardless of whether their intoxication was voluntary or involuntary. Secondly, rape cases often present with very little

physical evidence, and therefore, may have to be adjudicated based largely on testimony given by the perpetrator and complainant. The idea that alcohol affects memory and cognition seems like common sense. There is a large body of research that supports the view that memory is less accurate for material learned while under the influence of alcohol. Indeed, the most recent survey of psychology and law experts found that 90% believed that alcohol impairs memory.

All things considered, it is perhaps unsurprising that a recent review of three decades worth of rape statistics from England, Wales, Australia, Scotland, and the US found that, on average, only 15% of cases reported to the police result in a conviction.



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Is there a sufficient research base to support the view that alcohol impairs the accuracy of rape complainant testimony? Direct empirical research has come to light only recently. In past research, participants typically were asked to consume alcohol or a placebo beverage and then memorise a list of words. People who were intoxicated when they learned the list tended to remember the words less accurately in these studies.

A key concern however, is whether these results aid in our understanding of alcohol's effects on the accuracy of testimony given by real world witnesses and victims. In rape cases, complainants are asked to freely recall what they can remember about the crime. We know from other memory research that when people are at liberty to report or

withhold information, they monitor the likely accuracy of the information they remember and tend to report information only when they are relatively certain it is accurate. The implication is that complainants who were alcohol-intoxicated will provide testimony that is less complete but just as accurate as the testimony given by sober complainants.

Indeed, experiments find that people freely recall fewer details about a mock crime if they witnessed it while alcohol-intoxicated compared to sober. However, the number of incorrect details recalled does not differ depending on alcohol consumption in these studies. Hence, alcohol does not decrease recall accuracy in these studies. Rather, alcohol decreases recall completeness.

Researchers from around the world have replicated these findings. What about rape specifically? Does alcohol decrease the accuracy of rape complainant testimony? Rape reporting is often delayed, with victims giving accounts to the police 14 days after the crime on average. How does alcohol affect testimony under these circumstances?

We have conducted research studies to investigate these questions. Our methodology involves female participants consuming different doses of alcohol prior to engaging in a hypothetical interactive dating scenario with a male partner. The participant is able to determine for how long she wants to be in the scenario and control the amount of sexual contact occurring. If she decides to withdraw

from the hypothetical scenario and stops consenting to activity, nonconsensual sexual intercourse – an act of rape – is described.

We then test women's memory for the scenario up to four months later using a range of tests, including the cognitive interview, which is a protocol aimed at helping people to systematically remember an event. Police in England and Wales are trained to use this interview procedure. We found in our work that women who had consumed alcohol remembered the hypothetical rape as accurately as women who were sober. Further, the reports given by intoxicated, compared to sober women, were less complete. We believe they provided less information to maintain the accuracy of their testimony.

All things considered, it should not be assumed that testimony given by a rape complainant who was alcohol-intoxicated at the time of the assault is necessarily inaccurate. But more research is needed. We are now seeking to understand how first responders, police interviewers and others can best support victims who disclose that they were raped while alcohol-intoxicated. This research will allow rape investigators to obtain the best evidence they can in the furtherance of justice. **GR**

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