Rape myths Research & learnings from Aotearoa New Zealand

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Overview

- Internationally recognised myths and misconceptions in rape cases
- Observations from New Zealand research interviewing jurors post deliberation
- Trial process research demonstrating the impact of the deployment on complainant experience at trial
- Observations since the enactment of s 126A of the Evidence Act 2006 (NZ): misconception directions



International recognition

- 1.True ("real") rape is rape by a stranger.
- 2. True rape mostly takes place in an outdoor location and involves physical violence against a victim who does all she can to resist. She is consequently injured.
- 3. Consent to sex can be assumed from mode of dress or certain types of behaviour, such as flirting or kissing.
- 4. True victims have not reported rape more than once.
- 5. Genuine victims report rape immediately.
- 6. Genuine victims display great emotion when recounting the events in question.
- 7. Genuine victims will always give a thoroughly consistent account.
- 8. False allegations of rape are very common and constitute a large proportion of rapes reported to the police.
- AIFS 2024 Understanding-adult-sexual-assault-matters.pdf ("Insights")



Interviewing jurors post deliberation

- "Normal" rape victims would not be angry or display different levels of emotion when testifying in court as compared to when reporting to police
- Real victims would remember all the specific details of offending
- "[The] most basic misconception that appears to hold traction amongst jurors is that women routinely lie about rape and that there is therefore a preponderance of false allegations before the courts."
- Claire Baylis "Shaping Juror Narratives in Sexual Violence Cases: The Influence of Rape Myths and Misconceptions" PhD thesis, Victoria University of Wellington, 2021
- Yvette Tinsley, Claire Baylis and Warren Young "I Think She's Learned Her Lesson': Juror Use of Cultural Misconceptions in Sexual Violence Trials" (2021) 52 VUWLR 463





Concern that reliance on myths and misconceptions (implicit bias) impacts on decision-making as well as complainant experience at trial

"Just having to get up there and tell a room full of people in detail about what happened. ... It's not a nice thing to have to talk about – being forced to have sex in front of a whole lot of people. I thought I was going to be killed when I was raped. If I had, I would have been spared this – it was worse than the rape itself. If that's justice, I'd never report another rape." (1983)



"If anyone ever came to me and said, "this has happened to me, what should I do?" I would never recommend that they go through with a prosecution. I wouldn't recommend it for anybody to be honest. Honestly, I would probably tell them to see a psychologist over a Policeman." (2018)



"Looking back now, I wouldn't have gone to the police, because it is one of the hardest things you can ever do in your whole life. I can't even sum up in words what it does to you mentally and physically. You can be the world's strongest person ever in the world, but going to court can break you. It's awful." (2024)



Heightened emotionality

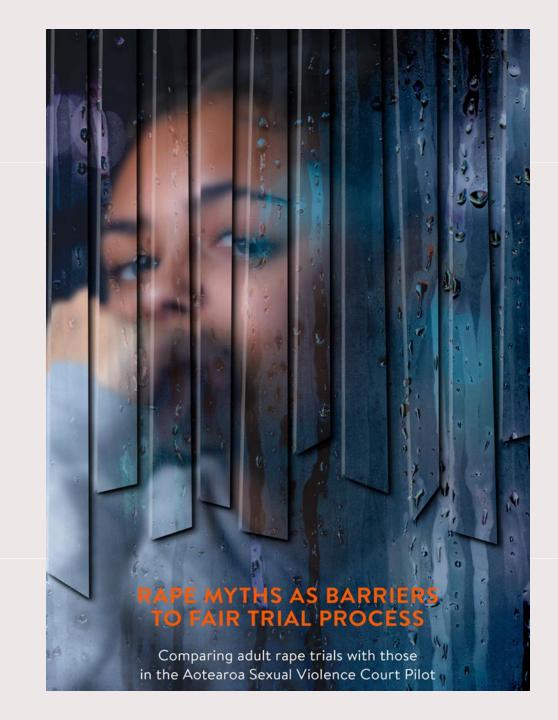
- Challenging behaviour not consistent with "real rape" (reliance on misconceptions)
- Expecting recall of minute details
- Questioning about inconsistencies over time
- Repetitive questioning on distressing aspects of the events
- Giving evidence of details of the alleged offending (penetration/body parts)
- Mocking and belittling questions





Rape myths as barriers to fair trial process: comparing adult rape trials with those in the Aotearoa Sexual Violence Court Pilot

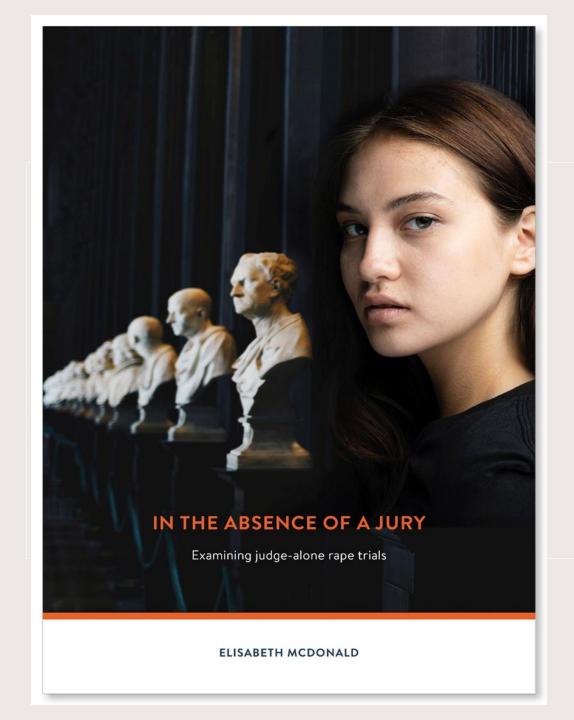
2020 (40 cases)





<u>In the absence of a jury: examining judge-alone rape trials</u>

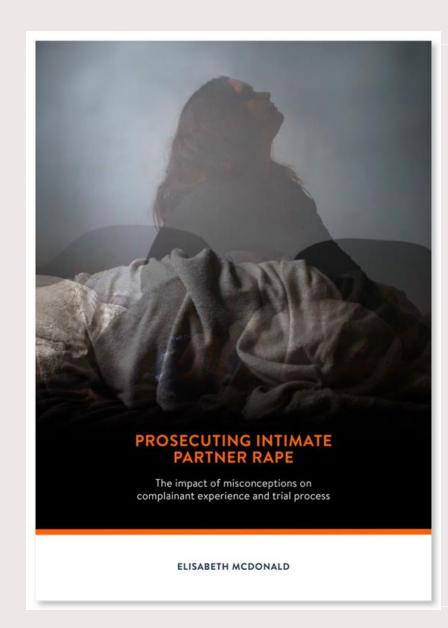
2022 (8 cases)





<u>Prosecuting Intimate Partner Rape: The impact of misconceptions on complainant experience and trial process</u>

2023 (20 cases)



Counting episodes of heightened emotionality

- Consequence of declaration of hostility means prosecutor can cross-examine but prior can ask leading questions/challenge complainant evidence
- Essentially all questioning amounts to a challenge
- Impact on length of EIC/REX and episodes of heightened emotionality
- Jury IPSV case median = 17: *James* = 113
- JAT IPSV case median = 29: *Oliver* = 618; *Hudson* = 1446



Experience of Complainants of Adult Sexual Offences in the District Court of NSW: A Trial Transcript Analysis (2023)

- Number of trials (n = 75) that featured crossexamination questions that evoked real rape attributes: 89%
- No immediate complaint: 84%
- No physical resistance: 51%
- No verbal communication of non-consent: 53%
- No injuries: 49%
- No force or threat: 31%
- Absence of visible/demonstrable distress: 33%
- Experience of Complainants of Adult Sexual Offences in the District Court of NSW: A Trial Transcript Analysis



Suffering for justice: Sexual violence victim-survivors' experiences of going to court and cross-examination (2024)

- Three quarters (73%) of victim-survivors (n = 38) were subjected to questions and accusations associated with rape myths by the defence during cross examination.
- One-third (36%) of victim-survivors were asked what they did to stop the offence while it was happening
- One third (33%) faced accusations that pursuing justice was a way of seeking revenge
- One-third (33%) experienced questions about their alcohol consumption or substance use
- 15% faced questions about what they were wearing
- <u>Sufferingforjusticereport.pdf</u>



Statutory misconceptions: s 126A

- (a) about the prevalence or features of false complaints in sexual cases:
- (b) that a victim or an offender in a sexual case has, or does not have, particular stereotypical characteristics:
- (c) that sexual offending is committed only by strangers, or is less serious when committed by a family member (including, but not limited to, a spouse, civil union partner, or de facto partner) or by an acquaintance:
- (d) that sexual offending always involves force or the infliction of physical injuries:
- (e) that, in a sexual case, a complainant is less credible or more likely to have consented, or a defendant's belief in consent is reasonable, based solely on the complainant—
 - (i) dressing provocatively, acting flirtatiously, or drinking alcohol or taking drugs:
 - (ii) being in a relationship with a defendant, including a sexual relationship:
 - (iii) maintaining contact with a defendant, or showing a lack of visible distress, after the alleged offending.



Common ground

- Absence of injuries/physical resistance
- No typical response nor typical offender
- Behaviour, clothing, context
- Time taken to report
- On-going contact with alleged offender
- Absence of distress or type of emotion displayed
- Gaps, inconsistencies, differences





Addressing-misconceptions-version-July-2024.pdf

What is accepted

- Deployment of rape myths impacts on complainant experience
- Juries give myths forensic meaning
- Expert evidence and jury directions are aimed at lessening impact of myths during decision-making
- Directions should lessen deployment of rape myths during the trial process



Observations to date

- What triggers directions (*Chapman*)
- "the Judge must give the jury any direction the Judge considers necessary or desirable to address any relevant misconception relating to sexual cases"
- must (or may) give if considers good reason
- must if meaning suggested regarding time taken
- Feedback from the profession: focus on concern about inconsistencies direction; lack of research
- Direction in advance; timing; repetition
- Consistency of practice and approach

