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Allegheny County judge criticized for overturning jury verdict in sex assault case



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An Allegheny County judge last week overturned a jury's guilty verdict in a sexual assault case and acquitted the defendant, a controversial move so rare that it stunned the state's victim advocate and led two of the jurors to question their service.

The decision feels “like it’s almost an abuse of power,” Jennifer Storm, Pennsylvania’s Victim Advocate, said.

“I’m absolutely appalled,” said juror Leslie Mason, 33.

Joon Woo (Jason) Baik, 24, a former Carnegie Mellon University student, was acquitted in May of rape of an unconscious victim, simple assault and false imprisonment. But after deliberating for two hours, the jury of seven men and five women found the Korean and Canadian dual citizen guilty of sexual assault.



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He was scheduled for sentencing July 22 before Allegheny County Common Pleas Judge Alexander P. Bicket.

However, defense attorney Matthew Ness asked the judge to throw out Mr. Baik’s conviction based on insufficient evidence.

Judge Bicket granted the motion, finding that the evidence at trial was “so unreliable and contradictory that it is incapable of supporting a verdict of guilty and thus insufficient as a matter of law.”

Career prosecutors in the Allegheny County Courthouse said they could not remember another such instance.

Ms. Storm took Judge Bicket to task for substituting his judgment for the jury's verdict.

"It's a betrayal of our judicial system and, certainly, it will impact a victim's ability to trust the system," she said. "It sends a chilling message to survivors that at any moment, a judge can throw out your verdict, he can throw out your justice."

Judge Bicket would not comment on the case or his decision. The Allegheny County District Attorney's office said only that it is reviewing whether to appeal.

Too drunk to consent?

According to the affidavit of probable cause, the alleged victim and Mr. Baik went out on Sept. 21, 2018, and then returned to his apartment on Morewood Avenue.

The woman, a University of Pittsburgh student, told police that they watched a movie and drank and that she was too drunk to consent to having sex.

However, Mr. Baik said that they had consensual sex. He made an audio recording of the events that night, and in it, the woman repeatedly said she wanted to have sex and encouraged him.

But Assistant District Attorney Emma Schoedel argued that the woman said no to sex as many times as she said yes, and that she told Mr. Baik to stop.

More than that, Ms. Schoedel said during the April 30 trial, the woman was too intoxicated to give informed consent.

The jury agreed, and Mr. Baik was convicted.

But in a motion for judgment of acquittal last week, Mr. Ness argued that the prosecution was required to prove to the jurors beyond a reasonable doubt that his client knew the woman was too drunk to consent.

He said they failed to do so.

"It wasn't like we heard multiple experts testify to her blood alcohol toxicity," Mr. Ness argued to Judge Bicket. "It wasn't like the commonwealth established with sufficient evidence that she, in fact, had so much alcohol she was incapable of consent."

Making inferences about the woman's alcohol consumption was not enough, Mr. Ness said.

Ms. Schoedel countered that there was plenty of evidence at trial, including testimony from officers and medical personnel who responded that she was incoherent, and that she could be heard in the audio recording slurring her words.

"Throughout the entire audio, she is saying one thing here and one thing there, not making coherent sense," the prosecutor said. "In the audio, the first thing she said, or one of the first things she said was, 'I'm so drunk right now,' in a slurred voice."

Mr. Baik responded in the recording that he was not drunk.

Later, when Mr. Baik was interviewed by the police, Ms. Schoedel continued, he told them he believed the woman was drunk and would have been unable to drive.

“That goes to his mens rea, his knowledge of her being intoxicated,” Ms. Schoedel said. “She was too drunk to ever consent to this.”

But when the woman was questioned by a Pittsburgh police sergeant who responded to UPMC Presbyterian to interview her, Mr. Ness said, she told him she had consensual sex with Mr. Baik.

Conflicting evidence

During the trial, when the woman was questioned about the audio recording made by Mr. Baik, she admitted that it was her voice saying that she wanted to have sex, but she told the jury she had no recollection of making those statements.

Presented with conflicting evidence, Judge Bicket found that “the testimony is so inherently unreliable that a verdict based upon it can amount to no more than surmise and conjecture.”

Pennsylvania’s Rules of Criminal Procedure allow a defense attorney to ask a judge to acquit someone after a verdict but before sentencing “under extraordinary circumstances, when the interests of justice require.”

The standard there, Mr. Ness said, is whether the facts presented at trial should have even been permitted to go to the jury for deliberation.

In Mr. Baik’s case, the defense attorney said, they should not have.

He acknowledged that Judge Bicket’s decision undid the jury’s verdict.

“Judges should not regularly impose their own wisdom,” Mr. Ness said. But, he continued, “Judges have been invested with significant discretion to ensure the laws of the commonwealth are upheld.

“They’re the final arbiter of what is legally sufficient.”

‘Out of our hands’

At least two of the jurors who sat on Mr. Baik’s case were upset by Judge Bicket’s decision to throw out their verdict.

“Did he not hear the tape?” asked Ms. Mason.

“I just don’t understand how anyone who listened to those tapes or watched the [police body camera] video, there’s no way he could not have known she was drunk. There’s no possible way.”

The jurors were aware that the alleged victim gave consent and took it away multiple times. Ms. Mason cited an analogy used by Ms. Schoedel at closings, “Collectively, we felt like just because you get one green light, you can’t ignore the red light.

“He heard all the yeses and ignored all the nos. That first ‘no,’ is all it should have taken — that no and given her intoxicated state,” Ms. Mason said. “The no came at the beginning — I do not want to go to your bedroom.”

At the end of the recording, Ms. Mason said, it was clear the victim was drunk. She can be heard screaming “Why did you do this to me?” for about five minutes, before running out of Mr. Baik’s apartment naked.

“I’m disappointed, for sure,” said Harris Schwartz, 39, who was also on the jury. “It feels like we sat there and did that for nothing. It takes the process out of our hands.”

Bruce Antkowiak, a former federal prosecutor who now teaches criminal law at St. Vincent College, said there’s no question that a judge has the authority to grant the defense motion, but that it happens “only in the most extreme cases where they truly feel that, as a matter of law, the evidence is just not there.

“Our system gives tremendous deference to juries,” he said. “It’s up to them to come out and do justice.”

Mr. Ness said that he does not see what happened as the judge overturning the jury’s work.

“I don’t think this verdict disrespects the jury but reaffirms basic legal principles that no one can be convicted of a crime absent the government establishing it through legally sufficient evidence beyond a reasonable doubt.”

Off the hook

Before the case ever went to the jury, Mr. Ness made the same motion to the judge, asking for the case to be tossed. Judge Bicket said no, leading Ms. Storm to question the judge’s timing.

“It makes no sense,” she said. “What happened between then and sentencing? How do you go back and change your mind?”

But Mr. Antkowiak said that sometimes, when a judge denies the motion during trial, it may be because the judge has genuine doubts about the ability of the commonwealth to get a conviction.

“And the judge may be contemplating granting the motion,” he said. “But knowing that the jury must, in the first instance, be given deference particularly on matters of credibility, the judge may let the matter go to verdict hoping that the jury would take the judge off the hook by failing to convict.”

Ms. Storm believes Judge Bicket’s actions set a dangerous precedent for the integrity of the jury verdict.

“It’s hard enough to be vulnerable and testify and go through a really traumatizing experience,” Ms. Storm said. “To then have that completely pulled out from under your feet. ... I can’t imagine how discouraging this is for her, but a jury of 12 people believed her, and I hope that’s justice for her.

“The justice system isn’t supposed to look like this.”

Maximum sentence

The alleged victim, who is from China, never got to read her impact statement at Mr. Baik's sentencing.

In it, she explained how the alleged crime caused her to fight with her parents, cut herself, and lose sleep.

The woman, 21, described how "horrified and helpless" she felt on the witness stand having to listen to the audio recording Mr. Baik made of their encounter without her knowledge.

She said she continues to be haunted by shame and embarrassment and often wakes up in the middle of the night screaming. She has started going to counseling.

"It took me a long time before I finally convinced myself that my life was not doomed, and I was not doomed because of this assault, but not without much emotional distress and struggle," she wrote.

She concluded her letter asking the court to give Mr. Baik the maximum possible sentence.

"I am hoping that the criminal justice system does what it is intended to do."

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