Was There Sufficient Evidence of A.S.'s Resistance to Hold Jones Guilty of Forcible Rape?

State v. Jones, *299 P.3d 219 (Idaho 2013)*

On May 27, Jones went to A.S.'s apartment to watch movies. He spent the night and remained there in the morning after Carpenter left for work and A.S.'s children went to school. At the time, A.S. was taking an antihistamine for a bee sting and a prescription anti-anxiety medication, both of which caused her to feel drowsy. As a result of her drowsiness she laid down on the living room couch and started to "drift off." Jones went into the living room, sat next to her, and started stroking her hair. A.S. testified that after he "grabbed a handful of hair and pulled" hard enough to hurt her, she was nonresponsive in hopes that "if [she] just laid there and didn't move he would leave [her] alone." She further stated that:

> After he was done pulling my hair, he left me alone for a little bit. And then he grabbed my chest and squeezed my breast really hard. . . . He apparently didn't get the reaction he wanted, and he moved down to my vaginal area. . . . He started touching me outside, and then he started putting his fingers inside me really hard. Jones then proceeded to pull down A.S.'s pants and underwear, and "pushed [her] legs apart and started having sex with [her]." In response, A.S. "just froze," and testified that she was "paralyzed" with fear.

Afterwards, Jones and A.S. went to the bedroom and shared a cigarette. Jones helped A.S. into bed and once again started to have sexual intercourse with her. She testified that:

> [H]e got off me and pulled his clothes back on and put mine back on. And then he sat me back up and asked me if he could have sex with me. And I just kept saying over and over again, no, my kids are going to be home soon. Eventually, Jones left the apartment.

A.S. drove to Carpenter's brother's house and told the brother's girlfriend that she had been raped. They took A.S. to the hospital where she told the staff that she had been sexually assaulted, but that she did not want to press charges. But law enforcement was contacted, and A.S. provided a statement to police while at the hospital.

On May 29, A.S. met with a detective, who arranged for A.S. to make a recorded call to Jones. A.S. confronted Jones regarding the incidents, and Jones is heard on tape apologizing. . . . Additionally, A.S. is clearly heard saying, "You think this is okay to do to people who are unconscious?" . . . Toward the end of the tape, A.S. asks Jones to describe what he did to her—he states that: "I think that I pushed things too

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