



Private and Confidential

12 May 2013

Dear Amy and Tristan

Thank you for your further letter. I am sorry that you do not wish to meet again, as the issues that you have raised are quite complex and more appropriate I think, for a face to face discussion than a written response. However I will seek to address your concerns in this reply.

Your case has now been reviewed by four Crown Prosecutors, the first in mid 2010 before the re-investigation by the police, twice in 2011, by Barry Kaye and Andrew Hadik, and then more recently by me. I have also discussed your case with my line manager Sarah Maclaren. All of the lawyers have concluded that there is no realistic prospect of conviction, and this has previously been explained to you by letter and in two meetings.

At the conclusion of the last meeting, over a year ago, you said that you fully understood the reasons for our decision and why it had been concluded that there was no realistic prospect of conviction. However you have since undertaken research on the law and you have set out your concerns in your letter. With the greatest of respect I think you may have misunderstood some aspects of the law, and I will seek to address these here.

I should say at this point that, in accordance with current practice, I will refer to the man you accuse as 'the suspect' rather than using his name, although it is of course known to you.

You are concerned that we decided not to prosecute on the grounds that we could not prove that the suspect did not reasonably believe you consented. You say in your letter that it is for a jury to decide this, the implication being that it is not a matter that the CPS needs to be satisfied about. I need to explain that we talk about an issue being 'a matter for the jury', that is to distinguish it from a matter that can be determined by a judge. A judge can withdraw a matter from the jury at trial on legal grounds. Issues of fact (rather than law) are properly left to juries rather than being ruled on by judges. There are a number of cases involving serious sexual assault when the Court of Appeal has said that trial judges were wrong in withdrawing issues of consent and capacity from juries. I think this is the situation that you are probably

thinking of. This, however, has no bearing on the fact that before a case ever reaches that stage, a Crown Prosecutor has to be satisfied that there is a realistic prospect of conviction in order to authorise a case being brought in the first place. Please see the Code for Crown Prosecutors that sets this out. We have to be satisfied that a jury would be more likely than not to convict the accused person of the offence alleged. This is clearly a lesser test than the jury would apply (the jury must be sure of a person's guilt beyond all reasonable doubt.) but we have to be sure that we can prove all the ingredients of the offence to this standard. If the evidential stage of the test set out in the Code for Crown Prosecutors is not met we cannot prosecute a case no matter how serious the allegations are. We have concluded that there was not a realistic prospect of conviction in your case because we consider it is not possible to prove the lack of reasonable belief in consent aspect of your case.

You devote a lot of your letter to demonstrating that in your view the suspect would not be able to establish he had a reasonable belief in Amy's consent. However the onus of proof in criminal proceedings is on the prosecution; it would be for us to prove that he did not have a reasonable belief in that consent. He would not have to prove that he did, or indeed anything else. The difficulties we would have in proving this aspect of the offence include the fact that although you cannot recall much of what happened you told that police that you did not resist or object to what he did at the time. You do not, and cannot, positively assert that you did not appear to consent. Both you and the suspect recall a passer-by saying 'get a room!'. When questioned, he gave an account to the police which included an explanation of why he believed you consented to what happened. The only part of the evidence which would assist would be if we could prove that when the alleged assaults took place Amy was so obviously under the influence of drink and/or drugs that it would have been apparent to him that she could not consent, or if he otherwise knew she was under the influence of drugs which incapacitated her because he had administered them himself, or been involved in this. With regard to the latter point, I think you accept that we cannot prove that the suspect drugged her or arranged for someone else to do this. With regard to how intoxicated she would have appeared, you believe that this would have been clear to him because the suspect says that the touching happened after he had spoken to Tristan on the phone. This would, on Tristan's account, have been after he had spoken to her, at 2042, when she was obviously very clearly drunk. To follow this line of reasoning we would have to base this crucial aspect of the case on the suspect's account of the phone call, whilst rejecting the truthfulness of the other aspects of his testimony. However it is not unreasonable to conclude that in the light of the fact that the suspect had also been drinking he could well have been mistaken as to the timing of the phone call. In interview he does not mention the other calls that took place, and there is clearly scope for confusion. His account is that he and Amy had been on their own for about 10 minutes when the physical contact occurred; the other witnesses say they left at about 8.15. The last people to leave the group do not in their statements raise concern about Amy's condition at that point.

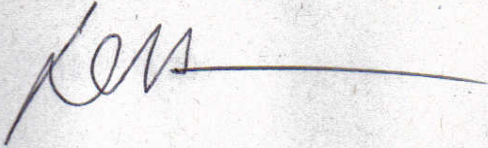
You also refer in your letter to the 'bookmaker's approach' to decision making with regard to the decision to prosecution. I am not quite sure quite what you mean by this in relation to your case, although I am of course familiar with this phrase. It derives from case law that has become a very important source of guidance for prosecutors in ensuring that the decisions we make are free from irrelevant and inappropriate

considerations, such as stereotypical or prejudicial beliefs about women and how victims of sexual violence are thought to behave. I can assure you that all the lawyers have taken the 'merits based approach' to your case.

I think that I have addressed the main points that you raise in your letter. I do appreciate how disappointed you are with our decision not to prosecute your case and the offer of a meeting remains open. I can be reached on 020 3357 7089 should you wish to speak to me.

Kind regards

Yours sincerely

A handwritten signature in dark ink, appearing to be 'Louise', followed by a long horizontal line extending to the right.

Louise Smith
Unit Head - RASSO