



DECEPTION, CONSENT TO SEX, AND *R v LAWRENCE*

Dr Mark Dsouza, UCL Faculty of Laws

m.dsouza@ucl.ac.uk

Background

- The protection of sexual autonomy is central to the purposes of the SOA 2003.
- V's sexual autonomy means she has absolute authority to choose when, and on what terms, to engage in sexual activity.
- The process of granting consent to sexual activity usually involves a largely visceral rather than cerebral exercise of sexual autonomy.

A 'Disjunctive Approach'

- We should adopt a '**Disjunctive Approach**', distinguishing between visceral and cerebral grants of sexual consent, when considering how the falseness of a belief affects sexual consent.
- Making the truth of a belief a precondition for granting sexual consent takes a cerebral exercise of sexual autonomy. Only where V did this, does the falseness of the belief vitiate sexual consent.

Implications (Basic)

- This means
 - a. V can make the truth of any belief a precondition for her consent, but only if she cerebrally exercises her sexual autonomy to do so, and
 - b. as a matter of principle, it doesn't matter how V came to hold the belief.

Implications (Extended)

Consistent with/achieves

IM v LM (on capacity to consent)

R v A(G) (on capacity to consent)

R v C (on capacity to consent)

Assange v SPA

R(F) v DPP

R(Monica) v DPP

R v Flattery

R v Williams

R v Jheeta

R v Bingham

Protects sexual autonomy

Not over-inclusive

Setting the Boundaries report [2000] re sexual autonomy, and meaning of 'deception as to purpose'

Rejects

R v Lawrance

*R v McNally**

Ratio decidendi of *R v Devonald*
(liability preserved)

Ratio decidendi of *R v Matt* (liability preserved)

* But it's complicated – see blogpost for more.

Links to Blogpost

- Part 1 (What's wrong with the doctrinal logic in *R v Lawrance* [2020] EWCA Crim 971): <https://www.ucl.ac.uk/criminal-law/news/2020/aug/deception-consent-sex-and-r-v-lawrance-part-1>
- Part 2 (The 'Disjunctive Approach' to considering how false beliefs affect sexual consent): <https://www.ucl.ac.uk/criminal-law/news/2020/aug/deception-consent-sex-and-r-v-lawrance-part-2>