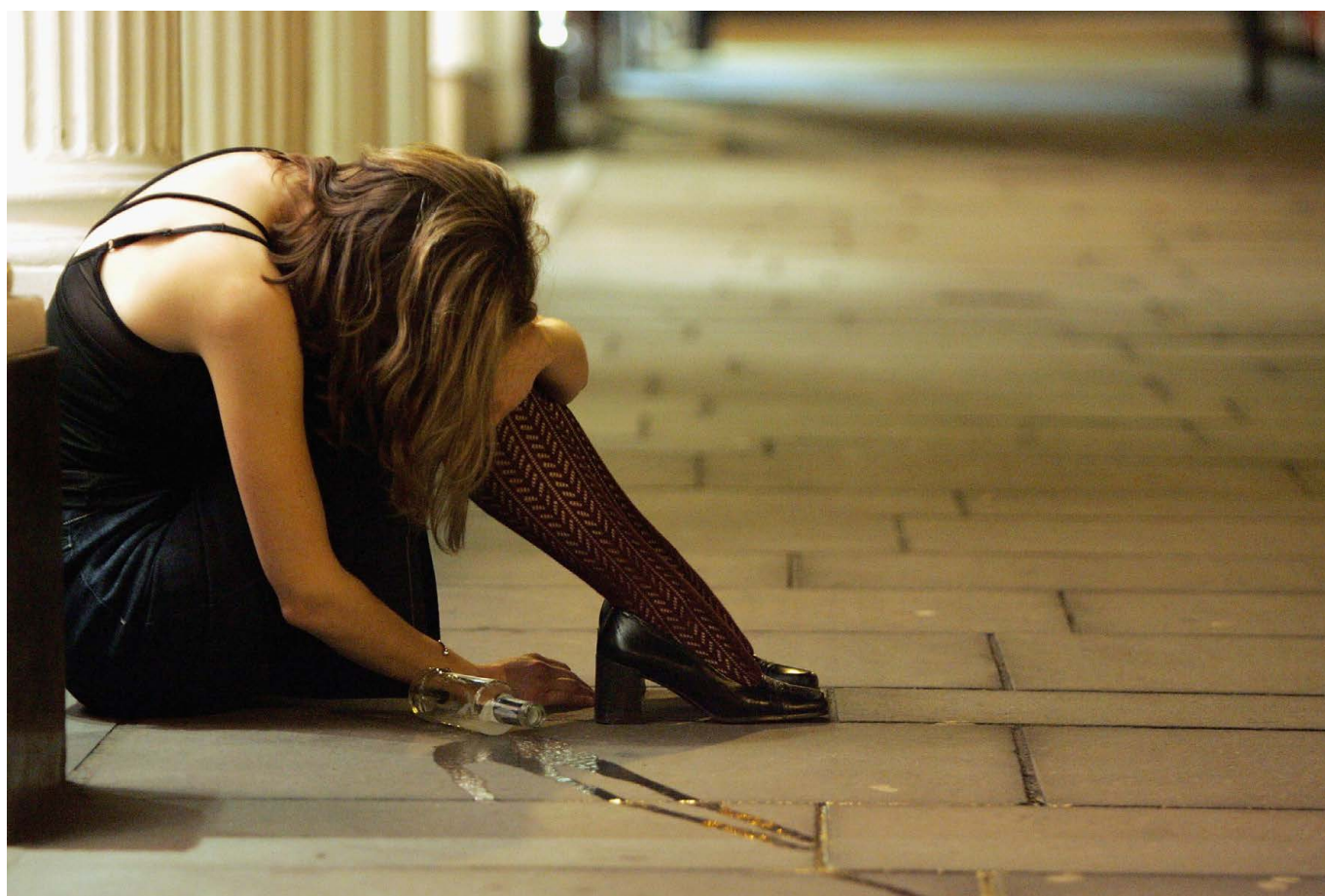


Sexual Violence and Complainant Intoxication

Heather Flowe, Anna Carline, Melanie Takarangi,
Joyce Humphries, Sally French and Mary Prior ask,
is this reason to discount the victim's testimony?



The relationship between sexual violence and intoxication is well documented (Finney, 2004; ONS, 2015). The British Crime Survey indicates that 29 *per cent* of victims were under the influence of alcohol at the time of the alleged assault, with this figure increasing to 38 *per cent* when the perpetrator was categorised as a stranger (ONS, 2015). Frequently, surveys and archival data indicate that eyewitness and victim testimony influences case outcomes—and sometimes, it is the only potential evidence available in a case (eg, Fisher & Schreiber, 2007;

Flowe, Stewart, Sleath, & Palmer, 2011). Yet, testimony from an intoxicated complainant is often perceived to be unreliable by criminal justice professionals and potential jurors (Kelly, Lovett, & Regan, 2005; Finch & Munro, 2005). This belief is likely to be a major factor in the under-reporting and low prosecution rates in sexual assault cases. Research conducted in the UK suggests that when the complainant has voluntarily consumed alcohol, the police are twice as likely to take no further action (Hohl & Stanko, 2015: 331) and the chances of an acquittal are significantly increased (Kelly

et al., 2005). The cases of *R. v. Dougal* ((2005) Swansea Crown Court, Unreported), *R. v. Bree* ((2007) EWCA Crim 804)), and more recently *R. v. Armitage, Chudzicki and Segiet* ((2015) Court of Appeal, Unreported), attest to the complexities faced by the prosecution in proving lack of consent when the complainant was highly intoxicated.

Impact of Intoxication on Memory

Several psychology studies support the assumption that alcohol can have a deleterious impact on memory. In laboratory studies, individuals who were intoxicated during an event have been shown to recall the event less completely and less accurately compared to those who were sober (eg, Bisby, Brewin, Leitz, & Curran, 2009; van Oorsouw & Merckelbach, 2012). One reason why alcohol can impair memory is because it restricts attention to the most salient and central details of an event (eg, Harvey, Kneller, & Campbell, 2013; Schreiber Compo et al., 2011; Steele & Josephs, 1990). This attentional narrowing suggests that information about the perpetrator's physical appearance might be better remembered by a witness who was intoxicated during the crime, whereas more peripheral details, such as physical surroundings and bystanders, might not be as well-remembered. Another possible reason why alcohol can impair memory is that intoxicated individuals may be more prone than sober individuals to accept and recall misinformation, or misleading or incorrect information about the event that the witness may learn afterwards from the media or other witnesses (see van Oorsouw, Merckelbach, & Smeets, 2015). But what do these results say about the memory of sexual assault complainants who were under the influence of alcohol during the crime?

Previous research is difficult to translate and apply to sexual assault complainants. First, research has found that alcohol does not always have a deleterious impact on memory (eg, Hagsand, Roos af Hjelmsäter, Granhag, Fahlke, & Söderpalm-Gordh, 2013; Schreiber Compo et al., 2012). Secondly, participants in alcohol memory studies are not tested in the context of a personally experienced traumatic event, like sexual assault, and this could also affect memory. Thirdly, in many previous studies the research participants had their memories tested while they were still intoxicated. Most police investigators believe that testimony provided by a witness who was intoxicated during the crime will be more accurate if the witness is interviewed after becoming sober (Evans, Schreiber Compo, & Russano, 2009). Hence, we need more research to understand how a memory for an event experienced while under the influence of alcohol is affected over time and after a person becomes sober.

Reassessing the Impact of Alcohol on Memory

Recently, research has begun to address these issues (Flowe, Takarangi, Humphries, & Wright, 2015; Flowe et al., under review), and we have been considering how these findings might be used to inform interviewing protocols that are used for sexual assault complainants

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who were under the influence of alcohol during the assault. The research conducted employed an experimental method and sexual assault scenarios based on real-life rape cases (see Flowe *et al.*, 2007). Women were recruited to take part in a study investigating women's sexual and dating behaviours. They received either a placebo or alcoholic drink in the laboratory. Those receiving an alcoholic drink were dosed to have a Blood Alcohol Concentration (BAC) of either .04 *per cent* or .08 *per cent*, which reflects the typical BAC range found for people in drinking establishments (van Oorsouw, & Merckelbach, 2012). All participants then received a hypothetical interactive "dating" scenario, in which they were introduced to a male and accompanied him on a date. Participants decided throughout the scenario whether they wanted to engage in the activities being described, some of which were sexual activities, or if they wanted to opt out. If they opted out – and about 90 *per cent* of participants eventually did – the male was described as engaging in sexual intercourse with them against their will. Twenty-four hours later, participants answered a series of multiple-choice questions about central (eg, appearance of the perpetrator) and peripheral (eg, time of day that the event occurred) aspects of the event. Participants were given the opportunity to decline to answer questions by selecting an "I don't know" option. Participants were also given a criminal lineup identification test. Up to four months later, participants were asked the same questions again.

Results indicated that women who were intoxicated during the scenario answered fewer questions compared to those who were sober. However, with respect to the questions they answered, the information given by intoxicated women was just as accurate as the information given by sober women. This pattern was true 24 hours later, as well as up to four months later. Additionally, intoxicated as well as sober women more accurately remembered central information (ie, information about the perpetrator) compared to peripheral information, and there was no difference in their ability to accurately identify the perpetrator from a lineup. Memory accuracy for information decreased from 24 hours to four months, particularly for peripheral information, regardless of whether participants were intoxicated. Another interesting finding was that when women reported an accurate answer 24 hours after the scenario, but forgot the information four months later, they

were much more likely to report "I don't know" than to provide an incorrect answer.

Taken together, our findings imply that when a complainant reports that she does not remember certain pieces of information, it suggests that she is monitoring her memory, and providing information only when she is certain that it is accurate. What is more, when a complainant who was intoxicated does provide information, it is just as likely to be accurate as information reported by a sober complainant. Intoxicated complainants, like their sober counterparts, are more likely to report information about the perpetrator rather than more peripheral information. Thus, alcohol intoxication on the part of the complainant during the crime does not appear to be a valid reason for dismissing the victim's testimony.

We have conducted several other studies that assess how robust our findings are when more forensically relevant testing methods are used, such as the Cognitive Interview (Fisher & Schreiber, 2007) and the Self Administered Interview (Gabbert, Hope, & Fisher, 2009), and the results of these studies are forthcoming. We believe our emerging findings could be important in developing protocols for interviewing victims who were intoxicated during the crime, as well as influence how this testimony is perceived throughout the criminal justice system.

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