Defense loses bid to up state's burden in college rape case

Sought 'reasonableness' jury charge on constructive force

Pat Murphy (https://masslawyersweekly.com/author/pat-murphy/) // May 6, 2026 // **7 Minute Read**

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In brief

- Appeals Court (https://masslawyersweekly.com/tag/appeals-court/?taxo-tag-body) upheld rape conviction in case involving Boston University students
- Court ruled victim's fear need not be "objectively reasonable" to prove constructive force
- Decision relied on prior ruling in *Commonwealth v. Vasquez*
- Legal experts warn ruling could reshape standards for proving force in rape cases

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The Appeals Court has rebuffed the efforts of a rape case defendant seeking to require prosecutors show that the alleged victim had an "objectively reasonable" fear of him for purposes of establishing the element of constructive force.

A Suffolk Superior Court jury found defendant Joseph Hraiz guilty of two counts of rape and one count of indecent assault and battery.

The case involved two Boston University students who had been best friends until the alleged incident. According to prosecutors, the defendant raped the victim in the dorm room of a mutual friend following a night of heavy drinking and the victim smoking marijuana.

At trial before Judge Kathleen M. McCarthy-Neyman, the defendant sought a jury instruction that the element of constructive force under the rape statute could not be determined solely by the alleged victim's subjective state of mind or feelings of fear.

Instead, the defendant requested that the jury also be instructed that the victim's fear be objectively reasonable.

On appeal, the defendant argued that the trial judge erred by refusing to give his requested jury instruction.

But the Appeals Court concluded that the defendant's proposed instruction would impermissibly add an element to the rape statute, G.L.c. 265, §22(b). In that regard, the panel cited the Supreme Judicial Court's 2012 decision in ***Commonwealth v. Vasquez* (https://masslawyersweekly.com/2012/07/17/criminal-murder-duress-blood-spatter-evidence/)**.

Decision ripe for SJC review

"What is paramount is that the rape statute, G.L.c. 265, §22, does not require that the victim's fear be objectively reasonable," Judge Vickie L. Henry **(https://masslawyersweekly.com/tag/judge-vickie-l-henry/?taxo-tag-body)** wrote on behalf of the panel. "As the Supreme Judicial Court explained in *Vasquez*, '[c]onstructive force requires "proof that the victim was afraid or that she submitted to the defendant because his conduct intimidated her."' The crime of rape 'necessarily includes the rape of both victims frozen by fear, as well as victims who are otherwise incapacitated.' Accordingly, the statute protects all victims who submit out of fear or intimidation, even if a hypothetical reasonable person might not have been frightened under the same circumstances."

The 19-page decision is ***Commonwealth v. Hraiz***, Lawyers Weekly No. 11-032-26 **(https://masslawyersweekly.com/2026/04/26/criminal-rape-constructive-force-4/)**.

'Perilous' precedent?

James Borghesani, a spokesperson for the Suffolk County District Attorney's Office, issued a statement on behalf of the commonwealth.

"For rape with constructive force, the law requires us to prove that the defendant's conduct actually placed the victim in fear so that their will was overcome," Borghesani wrote. "The instruction requested by the defense would put an additional burden on every rape survivor to justify their fear and their reactions (or lack thereof) to the assault. Every individual responds differently to trauma, as the court noted, and it would not be fair to apply some mythical 'reasonable victim' standard."

The defendant's attorney, Robert L. Sheketoff, did not respond to a request for comment prior to deadline.

But Boston criminal defense attorney **Martin G. Weinberg predicted the case will generate "important discussions" in the legal community.**

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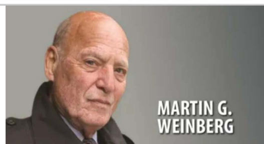
Though he said the specific language requested by the defendant modifying the subjectivity instruction did not necessarily need to be included, there should have been an instruction requiring proof of some element of criminal intent; namely, evidence showing the defendant either intended an act of force or intended a threatening communication to cause fear.

Weinberg pointed to the language in G.L.c. 265, §22, requiring proof of sexual intercourse by actual force or threat of force, the latter being the basis for the defendant's conviction.

"I would make the argument that [proving] threat of force would require some action by the defendant that was intended to overbear the will of the victim," Weinberg said. "But instead, this case has now created in a crystal-clear holding that this element can be exclusively proven by a victim's subjective testimony that they were subjectively in fear."



You read this case as providing a perilous precedent that some other college student having sex with his friend — believing this friend welcomed the sex, not having any threats by the defendant either verbally or physically, and not having any communication from the victim resisting an act of sex — could well be indicted for rape.

— Martin G. Weinberg, Boston

Weinberg said he is troubled by how *Hraiz* might be applied in future cases.

"You read this case as providing a perilous precedent that some other college student having sex with his friend — believing this friend welcomed the sex, not having any threats by the defendant either verbally or physically, and not having any communication from the victim resisting an act of sex — could well be indicted for rape," he said.

Boston College Law School Professor R. Michael Cassidy said he views *Hraiz* as ripe for review by the Supreme Judicial Court.

Cassidy added that the defendant should have been granted his requested jury instruction at trial based on dicta in two SJC decisions that the Appeals Court decided not to follow.

In a 1982 decision cited by the defendant, *Commonwealth v. Sherry*, the court observed that jury instructions **(https://masslawyersweekly.com/tag/jury-instructions/?taxo-tag-body)** stating that "intercourse must be accomplished with force 'such [as] to overcome the woman's will; that it be sufficient to accomplish the man's purpose of having sexual intercourse against her will' or by threats of bodily harm, inferred or expressed, which engendered fear 'reasonable in the circumstances … so that it was reasonable for her not to resist.'"

And in the 2015 decision in *Felix F. v. Commonwealth*, the SJC cited *Sherry* for the proposition that "[f]or purposes of the rape statute … 'threats of bodily harm' may be expressed or implied, so long as it is reasonable in the circumstances for the complainant to be in fear and not resist."

"It's very dangerous — and maybe a tad arrogant — for the Appeals Court to disregard two directives from the SJC that the [victim's] fear must be reasonably grounded on the grounds they were dicta," Cassidy said. "[*Hraiz*] would be an important case for the SJC to try to settle an unsettled area in the law in Massachusetts, which is the difference between 'constructive force' and 'implied force.' In other states, if you're charged with forcible rape, the government needs to prove actual physical extrinsic evidence to the act of penetration or a threat of force. The second element is [called] implied force in other jurisdictions"

A threat-of-force allegation in other states must be "reasonably grounded," Cassidy added, explaining that the constructive force cases in other jurisdictions typically involve situations in which there is a power imbalance between the defendant and the victim.

"Massachusetts has somewhat blurred the lines between constructive force and implied force by suggesting that situations involving strong intoxication and where the victim is asleep are constructive force cases," Cassidy said. "I think [*Hraiz*] is an implied force case, not a constructive force case, because even by the [victim's] own testimony, she was awakened by [the defendant's] touching before there was [sexual activity,] and she didn't say 'no' or resist."

Rape allegation

According to evidence at trial, a mutual friend, Megan, introduced the defendant and the alleged victim during their first year at Boston University. The victim and the defendant became best friends though never had a romantic relationship.

During their senior year, on April 24, 2021, the victim and the defendant joined Megan in Megan's dorm room, where they drank heavily. The victim also smoked marijuana.

The victim fell asleep in Megan's bed. Because the defendant lived off campus, the friends had planned for him to sleep in Megan's room. Later, when Megan tried to wake the victim so she could go home, the victim said she was too tired and Megan agreed to let her sleep on the floor with blankets and pillows.

According to prosecutors, during the middle of the night, the victim awoke to find that the defendant had pulled up her shirt and was painfully grabbing her breasts. The defendant allegedly also pulled down her underwear to both digitally penetrate her and perform oral sex. Afterward, the defendant got up to go to the bathroom and the victim fell asleep.

The victim testified at trial that while the defendant was sexually assaulting her, she was "terrified" and "just froze" and never said anything. The victim further testified that she "kept trying to tell [her]self that … [she] knew [the defendant] and that he wouldn't hurt [her]," but then realized that he was "literally" hurting her.

According to the victim, she also worried that the defendant was physically stronger than she was and that if she yelled for help and Megan did not wake up, he could panic.

The next morning, the victim called Megan to tell her what had occurred.

Commonwealth v. Hraiz (https://masslawyersweekly.com/2026/04/26/criminal-rape-constructive-force-4/)

THE ISSUE: Was a defendant who was accused of raping a friend in a college dorm room entitled to a jury instruction requiring that the evidence show the victim had an "objectively reasonable" fear of him for purposes of establishing the element of constructive force?

DECISION: No (Appeals Court)

LAWYERS: David D. McGowan of the Suffolk County District Attorney's Office (commonwealth)

Robert L. Sheketoff of Boston (defense)

Later that evening, the defendant sent a text to the victim saying he "just wanted to say sorry for being super touchy during the night, because I'm not sure if that would have been something you would have wanted if you were fully sober."

In a text to Megan, the defendant acknowledged that he had made a "huge mistake" in reference to how he had "sexually assaulted" the victim.

Despite his texts, the defendant would later testify at trial that the victim had initiated sexual contact when he woke up in the middle of the night.

The jury found the defendant guilty of two counts of rape under G.L.c. 265, §22(b), and one count of indecent assault and battery in violation of G.L.c. 265, §13H.

The defendant did not appeal his indecent assault conviction.

Conviction upheld

In affirming the defendant's rape convictions, apart from finding the SJC's analysis in *Sherry* dicta and the case controlled by *Vasquez*, the Appeals Court panel found "good reason" for not requiring that a rape victim's fear be objectively reasonable.

"First, while some people 'respond to sexual assault with active resistance, others "freeze," and "become helpless from panic and numbing fear,"" Henry wrote. "Of course, people who actively resist and people who freeze can both be afraid. … Second, '[o]ne who takes advantage of a victim's unreasonable fears of violence [to accomplish sexual intercourse without consent] should not escape punishment.'"

Henry noted that courts in other jurisdictions had declined to recognize a requirement that the victim's fear be reasonable under rape statutes that did not expressly include such a requirement.

"Here, the judge's instruction to the jury on constructive force tracked the model instruction on rape and was a correct statement of the law of this Commonwealth," she wrote.

Henry went on to say that the trial judge's "implied force" instruction allowed the jury to fully consider all the circumstances of the alleged assault.

"That necessarily included whether the actions of the defendant induced fear in the victim and placed the victim in such fear that her will was overcome," Henry continued. "Here, the defendant was free to argue all of the circumstances and challenge the credibility of the victim, and he did. He also argued that there was no reasonable basis for her fear. Whether a 'reasonable' woman would have experienced the same fear is not a determination the jury has to make, and the defendant did not succeed with this argument. We discern no error."

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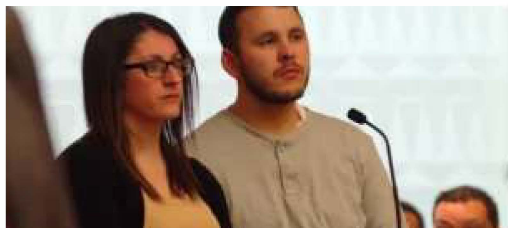

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