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CONDOM DEFENSE IS REJECTED IN AUSTIN SEX ASSAULT CASE

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By Sue Anne Pressley

AUSTIN, MAY 13 -- In a case that attracted national attention, a jury today convicted an Austin man of aggravated sexual assault after he claimed that a woman had consented to have sex by asking him to wear a condom.

A district court jury of eight women and four men returned the verdict against Joel Rene Valdez, 28, a part-time painter, after deliberating for 2 1/2 hours.

Several women in the courtroom cheered as the verdict was read. The victim, Elizabeth Xan Wilson, 26, bowed her head and cried.

Wilson, an artist, agreed after the verdict to allow the media to report her name and photograph her but said through her attorney, Mark Mueller, that she would have no comment until after Valdez is sentenced Friday.

"She feels vindicated," Mueller said. "It was horrible for her. She felt like she had been raped twice."

The case had become a touchstone for women's rights activists after a Travis County grand jury chose last fall not to indict Valdez in the Sept. 16 incident, prompting a storm of public protest. More than 100 demonstrators marched outside the county courthouse, carrying signs that said, "Protection Does Not Equal Consent" and "What Part of NO Don't You Understand?"

In a rare move, the district attorney took the case to another grand jury, which indicted Valdez in October.

Valdez, meanwhile, appeared on the "Donahue" syndicated television show to tell his side of the story.

During testimony in the four-day trial, Wilson, sometimes in tears, recounted a terrifying 45 minutes, describing how she had gone to bed after returning from a friend's party and looked up to find a man approaching her bedroom. She said he held her at knifepoint.

"I knew there wasn't much I could do to prevent what was going to happen," Wilson testified. "I thought maybe I could protect myself from dying from AIDS." She said Valdez initially refused to put on a condom, saying he did not have AIDS, but agreed reluctantly to wear one when she countered, "How do you know that I don't?"

In his testimony Wednesday, Valdez admitting entering the woman's apartment through a sliding-glass door and holding a knife as he stood in her bedroom doorway. But he insisted that she agreed to have sex with him.

He said the woman "told me to do her a favor" and wear a condom.

Valdez's attorney, Malcolm Nettles, appeared to minimize the condom issue in closing arguments today. He said that Valdez was drunk when he approached the woman and that he is "borderline retarded" with a below-average IQ that led him to interpret her condom request as consent.

After the verdict, Nettles said he was not surprised at the jury's decision but added that Valdez "was very surprised. He still feels like, based on the sequence of events and what happened that night, that he had consent to do those things he did.

"I think people are missing the point in this case," Nettles said. "Mr. Valdez has a very low IQ, and in his mind, he had put down the knife and was not sexually assaulting her . . . In his mind, with his degree of intelligence, with his degree of drunkenness, she did consent."

Valdez, who has no prior criminal record, could be sentenced to life in prison.

Prosecutor David Counts said he hopes that the verdict "sends a message that women can protect themselves."

Lynn Thompson-Haas, executive director of the Austin Rape Crisis Center, agreed. "If somebody's holding a knife over you at 3 o'clock in the morning, you have no complicity just because you're trying to protect yourself," she said. "This case showed that it's okay to do whatever you can to protect yourself, to try to reduce the injury. I think this verdict is really good for all the other survivors."

Special correspondent Elizabeth Hudson contributed to this report.

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