8.37. Prompt Outcry

Evidence that the victim of a sexual assault promptly reported the matter to another person is admissible:

(1) for the purpose of assessing the credibility of the complainant with respect to the commission of the offense; or

(2) when relevant, and to the extent necessary, to explain the investigative process and complete the narrative of events leading to the defendant's arrest.

Note

This rule is derived from substantial Court of Appeals precedent holding that in a sex offense criminal prosecution, evidence that the victim of the crime reported the assault shortly after it occurred is admissible as bearing on his or her credibility, a non-truth purpose. (*See e.g. People v Rosario*, 17 NY3d 501, 515 [2011]; *People v McDaniel*, 81 NY2d 10, 16-17 [1993]; *People v Rice*, 75 NY2d 929, 932 [1990]; *People v Deitsch*, 237 NY 300, 304 [1923]; *People v O'Sullivan*, 104 NY 481, 486 [1887]; *Baccio v People*, 41 NY 265 [1869].) In essence, it is "admissible to corroborate the allegation that an assault took place." (*McDaniel*, 81 NY2d at 16; *see also Rosario*, 17 NY3d at 511 [viewing the rule as "an exception to the inadmissibility of the prior consistent statements of an unimpeached witness"].)

The "premise" for this evidence, as stated by the Court, is that "prompt complaint was 'natural' conduct on the part of an 'outraged [complainant],' and failure to complain therefore cast doubt on the complainant's veracity; outcry evidence was considered necessary to rebut the adverse inference a jury would inevitably draw if not presented with proof of a timely complaint." (*Rice*, 75 NY2d at 931.)

There are two limitations to admissibility under this rule. First, the complaint must be made promptly, which requires it to be made "at the first suitable opportunity." (*See Rosario*, 17 NY3d at 512, 515; *People v Shelton*, 1 NY3d 614, 615 [2004].) What constitutes the first suitable opportunity "is a relative concept dependent on the facts." (*McDaniel*, 81 NY2d at 17; *see also O'Sullivan*, 104 NY at 489 [noting "circumstances which will excuse delay"].) Second, only the fact of complaint, and not the details, is normally admissible. (*See Rice*, 75 NY2d at 932

[error to admit description of the assailant under the rule]; *Deitsch*, 237 NY at 304 [same]; *Baccio v People*, 41 NY 265, 269 [1869] ["particulars of the complaint" not within the rule].) This limitation, however, does not preclude the potential admissibility of the content of the statement under an exception to the hearsay rule such as the excited utterance exception. (*See People v Brewer*, 28 NY3d 271, 278 [2016] ["brief account of what (complainant) told (complainant's) mother can be viewed as both a prompt outcry and an excited utterance"].)

While the prompt outcry rule has been developed and applied by the Court of Appeals in criminal sexual offense proceedings, the Court's rationale for the rule suggests it is equally applicable in other proceedings involving the commission of a sexual assault or offense. The Appellate Division, First Department, has recognized the potential admissibility of prompt outcry evidence at fact-finding hearings in Family Court. (*Matter of Dandre H.*, 89 AD3d 553 [1st Dept 2011]; *Matter of Brown v Simon*, 123 AD3d 1120, 1121 [2d Dept 2014].) The Appellate Division, First Department, has also held in a malicious prosecution action commenced by the plaintiff after he was found not guilty of the crime of rape that the prompt outcries of the victim were admissible to corroborate her testimony that an assault had taken place. (*Moorhouse v Standard, N.Y.*, 124 AD3d 1, 5-6 [1st Dept 2014].)

The Court of Appeals has held that a child's belated report of sexual abuse by the defendant, which was testified to by the child as well as by two relatives, was properly admitted for the purpose of "explaining the investigative process and completing the narrative of events leading to the defendant's arrest." (*See People v Ludwig*, 24 NY3d 221, 230-234 [2014]; *People v Cullen*, 24 NY3d 1014, 1016 [2014].)