

Ex-IMF chief may use tried, tricky consent defense

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Associated Press

Posted: 05/25/2011 12:16:52 AM PDT

Updated: 05/25/2011 10:23:47 AM PDT

NEW YORK—With his DNA discovered on the woman who accused him of trying to rape her and forcing her to perform oral sex, former International Monetary Fund chief Dominique Strauss-Kahn may employ a consensual sex defense that poses risks for defendants and prosecutors alike.

Strauss-Kahn has shed little public light on his account of what happened between him and a housekeeper at a luxury New York City hotel two weeks ago. But his lawyer has hinted at strategy, saying he doesn't expect the evidence will show a forcible encounter.

If Strauss-Kahn ultimately acknowledges sexual contact with the woman, jurors will be left to analyze a tricky "he-said, she-said" confrontation, legal experts say.

"They're really difficult cases because, by their very nature, nobody else is there," said Brenda Smith, an American University Washington College of Law professor who has studied sexual violence. Even DNA or other forensic evidence might establish sexual contact but still not prove an attack, "so it really is the credibility of the complainant and the defendant, and also the facts and information that each side can marshal to support their version of what occurred."

For now, Strauss-Kahn is under house arrest in a Manhattan apartment on a total of \$6 million in bond and cash bail, facing attempted rape and other charges. At the time of his May 14 arrest, the 62-year-old economist and diplomat led the powerful, loan-making IMF and was considered a leading

contender to challenge French President Nicolas Sarkozy.

Prosecutors say he chased down the cleaner in a penthouse suite, groped her, tried to pull down her pantyhose and forced her to perform oral sex.

The 32-year-old woman immediately told hotel staffers and then police, providing "a compelling and unwavering story" supported by findings from a physical exam, Manhattan assistant district attorney John "Artie" McConnell told a judge last week. Strauss-Kahn's DNA was matched Monday with material on the maid's uniform shirt, two people familiar with the investigation told The Associated Press.

The woman's attorney, Jeffrey Shapiro, has said "there is no way in which there is any aspect of this event which could be construed consensual in any manner."

But Strauss-Kahn lawyer Benjamin Brafman has suggested that might be exactly how his camp construes it.

"The forensic evidence, we believe, will not be consistent with a forcible encounter," he said in court last week. He and Strauss-Kahn's other attorneys have declined to elaborate and wouldn't comment on the case Tuesday.

Strauss-Kahn insists he is innocent, telling colleagues in his IMF resignation letter last week he would "devote all my strength, all my time, and all my energy" to proving it.

In general, consent is legally defined as positively cooperating in and understanding the act in

The Mercury News

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question, said Robin Sax, a former Los Angeles sex-crimes prosecutor now in private practice.

There have been some famous defense successes. Accused of raping a woman in 1991 at his family's estate in Palm Beach, Fla., William Kennedy Smith was acquitted of sexual battery. He'd met his accuser at a nightclub during a night out on the town with an uncle, the late U.S. Sen. Ted Kennedy.

Smith testified that the sex was consensual. He said he "felt sorry" for his accuser and acknowledged it was "foolish and irresponsible" for him to have unprotected sex with a woman he barely knew, but said she was equally foolish. Jurors took about an hour to acquit him.

To some, such arguments can look like trying to sully the accuser, a potential pitfall for a defense if jurors find it objectionable.

"That's always the classic claim, that you're blaming the victim, but that's said by people who don't understand," Smith's lawyer, Roy Black, said in an interview Tuesday. "The victim may not be on trial, but her testimony, her accusation, is on trial."

A claim of consensual sex failed for boxer Mike Tyson, convicted in 1992 of raping an 18-year-old beauty pageant contestant. Tyson acknowledged having sex with the woman in an Indianapolis hotel room but said he didn't force her. His lawyer argued that the woman filed charges out of anger at how Tyson had treated her after the encounter.

"It was a tough case," the lead prosecutor, J. Gregory Garrison, recalled Tuesday. Especially in acquaintance-rape cases, with no third parties who can describe what happened, "it's a question of persuasion."

The woman's torn clothes were shown during the trial, and a medical expert testified that the woman had sustained internal injuries that were inconsistent with consensual sex. But some of the key moments Garrison remembers were less about what was said than what was seen, as when audible gasps arose in the courtroom as the petite woman entered the courtroom to face the chiseled heavyweight champ. Tyson ultimately served about three years in prison.

It is usually difficult, if not impossible, to make a case without the accuser's testimony, and "victims

often don't want to go through the nightmare that may result," said Corey Rayburn Yung, a professor at the John Marshall Law School in Chicago who studies sex crimes.

The sexual assault case against NBA star Kobe Bryant was dropped after the woman told prosecutors she couldn't take part in a trial. She had accused Bryant of raping her in a hotel room in Vail, Colo. Bryant apologized for his "behavior that night and for the consequences she has suffered," while insisting the sex was consensual.

Prosecutors there said they were confident they could convict Bryant, but only with her cooperation.

"There are a lot of misconceptions by people. They think women make up sex assaults," Mark Hurlbert, the prosecutor in Bryant's case, said Tuesday. "I don't know why ... because it's such a traumatic process, not only the attack but what the system does to these victims. The person who comes forward to testify is pretty sure of herself."

Prosecutors and defense lawyers will scour for other evidence and indicators to back their side's version of events. They might look at forensic evidence and injuries, if any; whether the accuser reported the alleged incident immediately, and how consistently he or she related it; how the defendant behaved in the immediate aftermath; whether the accuser is seeking money in a lawsuit.

"He says he didn't do it, she says he did, so now whom do you believe?" said Black, Smith's lawyer. "The only thing you can do is look at all of the little pieces of information, all the disparate things that at first don't look important."

Associated Press writer Colleen Long and researcher Julie Reed contributed to this report from New York.