

# Digital communications evidence in rape and sexual assault trials: Findings from an observational study

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# Digital communications evidence (DCE)

- What is it?
  - Data from phones, social media, tablets etc
    - Text, images, videos, calls, chat logs, search history, notes/memos
- What are the concerns about it?
  - There is a lot of it!
  - It is highly malleable
  - Shaped by rape myths and victim-blaming attitudes



## How DCE is used in rape investigations in England

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Victim reports to the police

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Police download ALL data from their phone

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The data is searched for any information that may support or undermine the prosecution case

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Any potentially relevant data is passed to the prosecution and then on to the defence

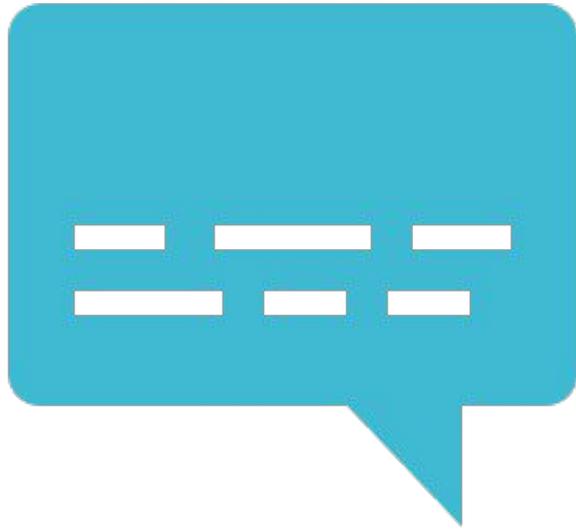


# Method: Courtroom observations

- Took place in 2019
- Observing from the public gallery
- 6 rape/sexual assault trials
- 3 Crown Courts
- *Contempt of Court Act 1981*

## Using DCE to support rape myths

- Myth: *Women often lie about rape / false allegations are common*
- Myth: *A 'real' victim wouldn't carry on speaking to their rapist*
- Myth: *A 'true' victim would tell someone about it right away*
- Myth: *If someone is telling the truth about rape, their story would be detailed and consistent*



# Defence tactics

- Casting doubt
- Turning corroborative into *uncorroborative*
  - Digital 'confessions'
- Reframing language
  - Contesting the meaning of words and phrases
- Removing the original context
- Replacing the context

Victims as  
untruthful /  
manipulative /  
collusive

“In the time between her report and [video interview] she messaged people to tell them something really bad had happened that was so difficult for her to talk about, yet she keeps telling people. **This, we submit, is a way for her to garner support and sympathy to keep up her charade.**”  
(Defence closing, Trial 1)

## Victims as irrational

“What you do know about [victim’s] credibility is that she also reported to the police that [defendant] was pestering her, sending unwanted messages to her asking for sex, [and she tells the police that is not something she is interested in because they split for good in [month] and she wants nothing to do with him, she signs that statement, she produces messages, and then what **we can see is that there is a wealth of communication both ways**, she gives a number of statements,] **does she say in any of them that she carried on sleeping with him? Now that doesn’t help you with the rape, but it does help you with credibility, doesn’t it?”** (Defence closing, Trial 2)

## Victims as inconsistent

**“She said she ‘wasn’t prepared’, she said she couldn’t remember saying it, but when she was shown the messages it was clear that she had said that.”**

(Defence closing, Trial 1)

# Reading meaning from emojis

“Can I ask you to consider very carefully what [Prosecution] has asked you to do, he read the last messages, **I just invite you to consider the last one, a laughing emoji followed by a monkey covering its eyes. Do her actions support what she says happened?**” (Defence, closing arguments, Trial 3)

“[Victim] doesn’t get a reply, **she sends another message, clearly agitated and frustrated**” (Defence, closing arguments, Trial 2)



# Final thoughts

- Proper consideration of what is 'relevant and proportionate'
- End speculative searches
- Independent legal representation/advocacy