

FILED
COURT OF APPEALS
DIVISION II

2013 APR -3 PM 12: 12

NO. 43506-3-II STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II DEPUTY

STATE OF WASHINGTON, Respondent

v.

WYLIE DEAN RHODES, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.11-1-01809-1

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

A. RESPONSE TO ASSIGNMENTS OF ERROR.....1

 I. THE JURY RETURNED A VERDICT OF GUILTY ON
 INDECENT LIBERTIES WITH FORCIBLE COMPULSION.
 1

 II. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE
 VERDICT.1

B. STATEMENT OF THE CASE1

C. ARGUMENT.....1

 I. THE JURY RETURNED A VERDICT OF GUILTY ON
 INDECENT LIBERTIES WITH FORCIBLE COMPULSION.
 1

 II. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE
 VERDICT.5

D. CONCLUSION6

TABLE OF AUTHORITIES

Cases

<i>State v. Lane</i> , 37 Wn.2d 145, 222 P.2d 394 (1950).....	5
<i>State v. Tang</i> , 77 Wn.App. 644, 650-51, 893 P.2d 646 (1995)	3
<i>State v. Vaughan</i> , 163 Wash. 681, 684, 1 P.2d 888 (1931).....	4

Statutes

RCW 9A.44.100.	2
---------------------	---

Other Authorities

53 Am. Jur. 716, § 1036	5
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Rules

CrR 6.16.....	5
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A. RESPONSE TO ASSIGNMENTS OF ERROR

I. THE JURY RETURNED A VERDICT OF GUILTY ON INDECENT LIBERTIES WITH FORCIBLE COMPULSION.

II. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT.

B. STATEMENT OF THE CASE

The issues presented in this appeal are entirely legal and do not turn on the underlying facts of the incident. As such, the State accepts Rhodes' recitation of the facts and supplements those facts where necessary in the argument section below.

C. ARGUMENT

I. THE JURY RETURNED A VERDICT OF GUILTY ON INDECENT LIBERTIES WITH FORCIBLE COMPULSION.

The defendant claims that the pre-printed language on the verdict form was insufficient where it said "Indecent Liberties." He claims the form was required to be pre-printed with the language "Indecent Liberties by Forcible Compulsion." The defendant's claim is seemingly predicated on his belief that there are different degrees of indecent liberties, when

there are not. There is one crime of indecent liberties which may be committed by any of six alternative means. See RCW 9A.44.100(1) One alternative, the one charged, instructed and proved here, is indecent liberties by forcible compulsion. By Information, the defendant was charged with indecent liberties by alternative (1) (a), forcible compulsion. CP 1. No other alternative was charged. CP 1. The jury was instructed that to convict the defendant of the crime of indecent liberties, it needed to be satisfied beyond a reasonable doubt that the defendant knowingly caused Stephanie Stocker to have sexual contact with him and that the sexual

¹ § 9A.44.100. Indecent liberties

(1) A person is guilty of indecent liberties when he or she knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another:

- (a) By forcible compulsion;
 - (b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;
 - (c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:
 - (i) Has supervisory authority over the victim; or
 - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;
 - (d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;
 - (e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or
 - (f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:
 - (i) Has a significant relationship with the victim; or
 - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.
- (2) (a) Except as provided in (b) of this subsection, indecent liberties is a class B felony.
(b) Indecent liberties by forcible compulsion is a class A felony.

contact occurred by forcible compulsion. CP 78. The State proved that the defendant knowingly caused Stephanie Stocker to have sexual contact with him, and the sexual contact was by forcible compulsion. The State did this through the testimony of Stephanie Stocker, which the jury, as the sole judge of credibility, believed. The defendant's sole complaint in this appeal is that the verdict form, on which the jury memorialized its decision, stated only the crime with which the defendant was charged--indecent liberties--instead of also specifying the means by which the defendant committed the crime.

But Rhodes cites no authority which holds that a *verdict form* for a crime that may be committed by alternative means--but where only one alternative was charged and submitted to the jury--must specify which alternative the jury relied upon. To be clear, this is not a case where the defendant was charged with indecent liberties by more than one alternative. In *State v. Tang*, 77 Wn.App. 644, 650-51, 893 P.2d 646 (1995), the Court of Appeals held: "Where a defendant *is charged with alternate means* which have different seriousness levels and is convicted by general verdict, a special interrogatory is required to ensure that the defendant will be sentenced using the proper standard range." (Emphasis added). Here, there is no suggestion that the jury could have found indecent liberties by anything but forcible compulsion. They were not

instructed on any other alternative, nor did the State present evidence on any other alternative. Thus, the defendant's quibble rests entirely on the form of the verdict rather than its substance.

Interestingly, the defendant cites no authority which holds that the verdict form must actually specify the crime. In other words, if the verdict form in this case merely said "Guilty as to the crime charged in Count I," Rhodes cites no authority which holds this would be reversible error. Indeed, "[a] verdict will not be void for uncertainty if its meaning can be determined by reference to the record, as by reference to the indictment or information." *State v Vaughan*, 163 Wash. 681, 684, 1 P.2d 888 (1931) (internal citation omitted). In *Vaughan*, the defendant was charged with "going upon a freight train with the intent to commit robbery thereon," but the verdict form said "We, the jury in the above entitled cause, do find the defendant, Leet Vaughan, guilty of the crime of train robbery as charged in count No. 1 of the information." *Vaughan* at 684. The Court held:

This verdict misdescribes the crime, but definitely specifies the count. It is true that a verdict must be certain and responsive to the issue or issues submitted to the jury, but if a verdict is responsive to the issue or issues, additional words which are not a part of the legal verdict may be treated as surplusage... A verdict will not be considered void for uncertainty if its meaning can be ascertained by reference to the indictment or information.

Vaughan at 685 (internal citations omitted).

Similarly, in *State v. Lane*, 37 Wn.2d 145, 222 P.2d 394 (1950) the

Supreme Court held:

Because inartificial expressions and words are sometimes employed in framing a verdict, the first object in the construction of a verdict is to learn the intent of the jury, and when this can be ascertained, such effect should be given to the verdict, consistent with legal principles and construing it as a whole, as will most nearly conform to the intent. The jury's intent is to be arrived at by regarding the verdict liberally, with all reasonable intendments in its support and with the sole view of ascertaining the meaning of the jury, and not under the technical rules of construction which are applicable to pleadings. In the interpretation of an ambiguous verdict, the court may make use of anything in the proceedings that serves to show with certainty what the jury intended, and for this purpose, reference may be had, for example, to the pleadings, the evidence, the admissions of the parties, the instructions, or the forms of verdict submitted.

Lane at 152, citing 53 Am. Jur. 716, § 1036. It is worth noting that whereas CrR 6.16 provides a sample verdict form which calls for the crime to be pre-printed on the form, the language of the rule is permissive (“The verdict of the jury *may be* in substantially the following form...”).

In sum, Rhodes does not demonstrate error.

II. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT.

Rhodes claim of insufficient evidence depends entirely upon this Court sustaining his first assignment of error, to wit: that the verdict form failed to operate as a verdict of guilty as to indecent liberties by forcible

compulsion. He doesn't actually argue that the evidence is insufficient to sustain a verdict of guilt as to indecent liberties by forcible compulsion. Rather, he argues that because the verdict form would only authorize judgment as to one of the other methods of committing indecent liberties (a claim on which he is incorrect), and because the State failed to present evidence on any alternative mean of committing the offense, the evidence is therefore insufficient to sustain the verdict. Rhodes, again, fails to demonstrate error. The State presented sufficient evidence to sustain the verdict.

D. CONCLUSION

The defendant's assignments of error are meritless and his conviction should be affirmed.

DATED this 29th day of March, 2013.

Respectfully submitted:

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DECLARATION OF
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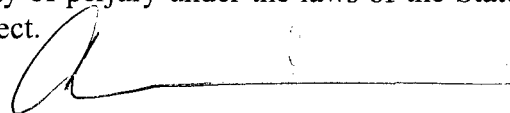
STATE OF WASHINGTON)
 : ss
COUNTY OF CLARK)

On April 1, 2013, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO: David Ponzoha, Clerk Court Of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402-4454	John A. Hays Attorney at Law 1402 Broadway Longview WA 98632
WYLIE DEAN RHODES DOC # Address	

DOCUMENTS: Brief of Respondent .

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.



Date: April 1, 2013.

Place: Vancouver, Washington.