

No. 429636

11 DEC -1 AM 9:57
COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON
BY DEPUTY

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT

OF

DYNAMITE SALAVEA,

Petitioner.

OPENING BRIEF

Sheryl Gordon McCloud
710 Cherry St.
Seattle, WA 98104-1925
(206) 224-8777
Attorney for Petitioner
Dynamite Salavea

ORIGINAL

TABLE OF CONTENTS

I.	ISSUES PRESENTED.....	1
II.	STATEMENT OF THE CASE.....	2
	A. <u>Trial Court Proceedings</u>	2
	B. <u>Sentencing</u>	6
	C. <u>Appeal</u>	6
III.	SUMMARY OF ARGUMENT.....	7
IV.	ARGUMENT: CONVICTING MR. SALAVEA OF BOTH COUNTS I AND II, AND COUNTS III AND IV, AND OF CHILD MOLESTATION COUNTS V AND VI, VIOLATED DOUBLE JEOPARDY CLAUSE PROTECTIONS.....	10
	A. <u>The Information Charged Identical First-Degree Rape Charges in Counts I and II and in Counts III and IV</u>	10
	B. <u>The Child Molestation Crime Charged in Count V Duplicated the Rapes Charged in Counts III and IV and the Child Molestation Crime Charged in Count VI Duplicated the Rapes Charged in Counts I and II</u>	11
	C. <u>The Evidence Did Not Cure These Problems</u>	12
	D. <u>The Jury Instructions Exacerbated the Problem</u>	17

E.	<u>Charging Identical Crimes in Counts I and II and Counts III and IV in This Manner Violates Double Jeopardy Clause Protections</u>	19
F.	<u>Based on the Charges and Instructions, Counts V and VI Duplicated Rape Counts I-IV and Hence They also Violated Double Jeopardy Clause Protections</u>	26
G.	<u>The Errors Mattered</u>	31
V.	THE ONE-YEAR TIME LIMIT DOES NOT APPLY, BECAUSE THIS PRP ALLEGES A VIOLATION OF DOUBLE JEOPARDY CLAUSE PROTECTIONS.....	34
VI.	CONCLUSION.....	34

TABLE OF AUTHORITIES

	Page(s)
STATE CASES	
<i>Englehart v. Gen. Elec. Co.</i> , 11 Wn. App. 922, 923, 527 P.2d 685 (1974)	30
<i>In re Personal Restraint of Powell</i> , 92 Wn.2d 882, 602 P.2d 711 (1979).....	33
<i>In re Personal Restraint of Richardson</i> , 100 Wn.2d 669, 675 P.2d 209 (1983), <i>overruled</i> <i>on other grounds, State v. Dhaliwal</i> , 150 Wn.2d 559, 79 P.3d 432 (2003).....	33
<i>Pepperall v. City Park Transit Co.</i> , 15 Wash. 176, 180, 45 P. 743, 46 P. 407 (1896), <i>overruled on other grounds, Thornton v.</i> <i>Dow</i> , 60 Wash. 622, 111 P. 899 (1910).....	30
<i>Scoccolo Constr., Inc. v. City of Renton</i> , 158 Wn.2d 506, 522–23, 145 P.3d 371 (2006).....	30
<i>State v. Freeman</i> , 153 Wn.2d 765, 772, 108 P.3d 753 (2005).....	10, 31
<i>State v. French</i> , 157 Wn.2d 593, 610-11, 141 P.3d 54 (2006)	9, 26
<i>State v. Hayes</i> , 81 Wn. App. 425, 914 P.2d 788, <i>review denied</i> , 130 Wn.2d 1013 (1996).....	25
<i>State v. Heaven</i> , 127 Wn. App. 156, 110 P.3d 835 (2005)	20
<i>State v. Hickman</i> , 135 Wn.2d 97, 102, 954 P.2d 900 (1998).....	29, 30

State v. Hull,
83 Wn. App. 786, 797-98, 924 P.2d 375 (1996),
review denied, 131 Wn.2d 1016 (1997)..... 29

State v. Mutch,
171 Wn.2d 646, 254 P.3d 803 (2011)..... *passim*

State v. Noltie,
116 Wn.2d 831, 809 P.2d 190 (1991)..... 25

State v. Salavea,
115 Wn. App. 52, 60 P.3d 1230 (2003) 4, 5

State v. Salavea,
151 Wn.2d 133, 86 P.3d 125 (2004)..... 5

FEDERAL CASES

Ball v. United States,
470 U.S. 856, 105 S.Ct. 1668, 84 L.Ed.2d 740
(1985)..... 33

Blockberger v. United States,
284 U.S. 299, 52 S.Ct. 180, 76 L.Ed.2d 306 (1932)10, 31

Townsend v. Burke,
334 U.S. 736, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948) 33

United States v. Tucker,
404 U.S. 443, 92 S.Ct. 589, 30 L.Ed.2d 592 (1972) 33

Valentine v. Konteh,
395 F.3d 626 (6th Cir. 2005) 20

STATE STATUTES

RCW 9A.44.01028, 29

RCW 9A.44.073 3, 4

RCW 9A.44.083 4, 5

RCW 10.73.100(3) 34

RULES

CrR 4.3(a)

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V8, 20

U.S. Const. amend. XIV..... 8

Wash. Const. art. I, § 98, 20

OTHER

WASHINGTON PATTERN JURY INSTRUCTIONS CRIMINAL
(3d edition). Vol. 11, WPIC 45.0128, 29

I. ISSUES PRESENTED

1. Mr. Salavea was convicted of two counts of committing the exact same crime – rape of a child in the first degree – against the exact same victim, on the exact same dates, in identical charging language followed by identical instructions.

a. Do Mr. Salavea's convictions of both Counts I and II violate double jeopardy clause protections, since they both charge the exact same crime – rape of a child in the first degree – against the exact same victim, on the exact same dates, and the jury instructions failed to distinguish between the two of them in any way?

b. Do Mr. Salavea's convictions of both Counts III and IV violate double jeopardy clause protections, since they both charge the exact same crime – rape of a child in the first degree – against the exact same victim, on the exact same dates, and the jury instructions failed to distinguish between the two of them in any way?

2. Mr. Salavea was also convicted of committing two counts of child molestation in the first degree against those same children, on those same dates, in Counts V and VI.

a. Do Mr. Salavea's convictions of child molestation on Counts V and VI, involving the exact same victims as Counts I-IV, on the exact same dates, also violate double jeopardy

clause protections – given that the jury instructions included the elements of “sexual contact” and sexual gratification in not just the molestation crimes, but also the rape crimes?

II. STATEMENT OF THE CASE

A. Trial Court Proceedings

On October 25, 2000, the state charged that Mr. Salavea had committed four counts of rape of a child in the first degree and two counts of child molestation in the first degree while he was still a juvenile. But according to the charging Information, the evidence at trial, and the jury instructions, several of those crimes were duplicates of each other. Specifically, the Information (Appendix A), filed October 25, 2000, makes no distinction in terms of dates, times, places, or victims, between Counts I and II, rape of a child in the first degree against victim “R.K.T.” on the one hand, and Counts III and IV, rape of a child in the first degree against victim “R.U.T.” on the other hand.

They do contain arguably differentiating prefatory language:

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accus DYNAMITE SALAVEA aka PALE TUUPO of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or

so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows ...

Information, Appendix A.

But the substantive allegations of each rape charged in Counts I and II are identical, and the substantive allegations of each rape charged in Counts III and IV are identical.

Count I charges:

That DYNAMITE SALAVEA AKA PALE TUUPO, in Pierce County, during the period from February, 1996 through June, 1998, did unlawfully and feloniously being at least 24 months older than R.K.T., engage in sexual intercourse with R.K.T., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

Count II charges:

That DYNAMITE SALAVEA AKA PALE TUUPO, in Pierce County, during the period from February, 1996 through June, 1998, did unlawfully and feloniously being at least 24 months older than R.K.T., engage in sexual intercourse with R.K.T., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

Count III charges:

That DYNAMITE SALAVEA AKA PALE TUUPO, in Pierce County, during the period from February, 1996 through June, 1998, did unlawfully and feloniously being at least 24 months older than

R.U.T., engage in sexual intercourse with R.U.T., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

Count IV charges:

That DYNAMITE SALAVEA AKA PALE TUUPO, in Pierce County, during the period from February, 1996 through June, 1998, did unlawfully and feloniously being at least 24 months older than R.U.T., engage in sexual intercourse with R.U.T., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

Information, Appendix A.

Thus, Counts I and II are identical. They list the same dates, times, and victim.

The same is true of Counts III and IV. They are also identical. They list the same dates, times, and victim.

Count V then charges child molestation's elements as a subset of the elements of rape in Counts III and IV. It states:

That DYNAMITE SALAVEA AKA PALE TUUPO, in Pierce County, on or about during the period from February, 1996 through June, 1998, did unlawfully and feloniously being at least 36 months older than R.U.T., have, or knowingly cause another person under the age of eighteen to have, sexual contact with R.U.T., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

Information, Appendix A. Count VI charges child molestation's elements as a subset of the elements of rape in Counts I and II. It states:

That DYNAMITE SALAVEA AKA PALE TUUPO, in Pierce County, on or about during the period from February, 1996 through June, 1998, did unlawfully and feloniously being at least 36 months older than R.K.T., have, or knowingly cause another person under the age of eighteen to have, sexual contact with R.K.T., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

Information, Appendix A.

As discussed in the Argument section, below, the jury instructions tracked the errors in this charging Information. In fact, the jury instructions even included the element of "sexual contact" for the purpose of sexual gratification as an element of both first-degree child molestation and *first-degree rape*. See Instructions 8 and 10, Appendix D. Normally, the absence of that element in a rape charge distinguishes it sufficiently from a contemporaneous child molestation charge to avoid double jeopardy problems. But since the instructions included that element in all the crimes in Mr. Salavea's case, they did not avoid that double jeopardy problem here. They exacerbated it. See Argument Section IV(F), below.

Finally, the evidence presented at trial did not differentiate between different alleged acts on different specific days, either. The testimony was that sexual acts occurred on dates that spanned several years, with no specification of a date for any particular act. Hence, the evidence did not cure the double jeopardy problem, either. See Argument Section IV(C), below.

Mr. Salavea was convicted as charged.

B. Sentencing

At sentencing, the judge imposed a sentence in the middle of the standard sentence range calculated on the basis of all six convictions, and using 1998 rather than 1996 Sentencing Guidelines. The highest range, for the Class A crimes, with an offender score of 17, was 240-318 months. The court imposed 280 months. Judgment & Sentence, Appendix B, filed August 10, 2001.

C. Appeal

Mr. Salavea timely appealed to the Court of Appeals, Division II, in Case No. 27744-1-II. Appellate defense counsel raised two issues: the state's delay in filing the charges against Mr. Salavea until after he turned 18, and the trial court's error in admitting the "child hearsay" statements that the alleged victims supposedly made to their mother, the family friends, and the

interviewers. The Court of Appeals rejected both arguments. *State v. Salavea*, 115 Wn. App. 52, 60 P.3d 1230 (2003). The Washington Supreme Court granted review on the single issue of prosecutorial delay in filing and then affirmed. *State v. Salavea*, 151 Wn.2d 133, 86 P.3d 125 (2004).

III. SUMMARY OF ARGUMENT

Counts I and II charged rape of a child in the first degree in the same language, on the same dates – from 1996 to 1998 – and against the same victim, “R.K.T.” The instructions told the jury that they had to be unanimous about each count and decide each count separately, but they did not tell the jury that the acts upon which they must unanimously agree to convict of Count I must be separate from the acts upon which they must unanimously agree to convict of Count II. Finally, the evidence did not distinguish between the two counts. Both the children who alleged abuse and the adults to whom they told their allegations of abuse testified in very general terms about it having occurred sometime between 1996 and 1998. None of them gave specific dates. Given these allegations, these instructions, and this state of the evidence, the convictions of first-degree rape in Counts I and II violated double jeopardy protections under the authority of *State v. Mutch*, 171

Wn.2d 646, 254 P.3d 803 (2011) (applying this protection to charging Information and jury instructions that permitted conviction of the same sex crimes involving the same victim for the same acts), U.S. Const. amend. V, and Wash. Const. art. I, § 9. The remedy is to vacate one of these duplicative convictions, either Count I or Count II.

Counts III and IV then charged rape of a child in the first degree in the same language, on the same dates – from 1996 to 1998 – against a different victim, “R.U.T.” Just as with Counts I and II, the jury instructions did not ensure that the acts upon which the jury unanimously agreed to form a basis for convicting on Count III were separate from the acts upon which they agreed to convict of Count IV. And just as with Counts I and II, the evidence did not distinguish sufficiently between the two counts. Given these allegations, these instructions, and this state of the evidence, the convictions of first-degree rape in Counts III and IV also violated double jeopardy protections. *Mutch*, 171 Wn.2d 646; U.S. Const. amends. V, XIV; Wash. Const. art. I, § 9. The remedy is to vacate one of these duplicative convictions, either Count III or Count IV.

Finally, Count V charged child molestation in the first degree on those same dates and involving the victim R.U.T. – the same

victim as the one named in Counts III and IV. And Count VI charged child molestation in the first degree on those same dates and involving the victim R.K.T. – the same victim as the one named in Counts I and II. Child molestation in the first degree is not always considered a lesser included offense child rape in the first degree, because each crime contains an element that the other one does not: first-degree rape contains the element of penetration which molestation does not, and first-degree molestation contains the element of “sexual contact” which includes sexual gratification, which rape does not. *State v. French*, 157 Wn.2d 593, 610-11, 141 P.3d 54 (2006). In this case, however, that difference did not exist. Instead, Jury Instruction No. 10 told the jury that “sexual contact” and sexual gratification were elements of child rape in the first degree as well as child molestation. Appendix D. And the state requested those instructions. Appendix C (State’s Proposed Jury Instructions). Sexual contact and sexual gratification must therefore be considered elements of the rape crimes of which Mr. Salavea was convicted under the law of the case doctrine. That means that in Mr. Salavea’s case, molestation did not have an element that rape did not have – only rape had one element that molestation did not have, that is, the element of penetration. As

charged in this case, then, both molestation charges were lesser included offenses of the rapes charged in Counts I-IV, because they contained a subset of the elements of the rapes charged in Counts I-IV. See *State v. Freeman*, 153 Wn.2d 765, 772, 108 P.3d 753 (2005) (citing *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed.2d 306 (1932)).

As a result, either Count I or II must be vacated; either Count III or IV must be vacated; and both Counts V and VI must be vacated. This will drastically affect Mr. Salavea's offender score and, hence, the case must be remanded for resentencing.

IV. ARGUMENT: CONVICTING MR. SALAVEA OF BOTH RAPE COUNTS I AND II, OF BOTH RAPE COUNTS III AND IV, AND OF CHILD MOLESTATION COUNTS V AND VI, VIOLATED DOUBLE JEOPARDY CLAUSE PROTECTIONS

A. The Information Charged Identical First-Degree Rape Crimes in Counts I and II and in Counts III and IV

On October 25, 2000, the state charged that Mr. Salavea had committed four counts of rape of a child in the first degree and two counts of child molestation in the first degree while he was still a juvenile, during unspecified times from 1996 to 1998. But according to the charging Information, the evidence, and the jury instructions, several of those crimes were duplicates of each other.

Specifically, the Information, Appendix A, makes no distinction in terms of dates, times, places, or victims, between Counts I and II, rape of a child in the first degree against victim "R.K.T." on the one hand, and Counts III and IV, rape of a child in the first degree against victim "R.U.T." on the other hand.

B. The Child Molestation Crime Charged in Count V Duplicated the Rapes Charged in Counts III and IV and the Child Molestation Crime Charged in Count VI Duplicated the Rapes Charged in Counts I and II

The child molestation charges are also duplicates. Count V charged that alleged victim "R.U.T." – the subject of rape Counts III and IV – was molested on the exact same dates as he was supposedly raped. Count VI charged that alleged victim "R.K.T." – the subject of rape Counts I and II – was molested on the exact same dates as he was supposedly raped. The instructions on these crimes did not require that the jury to find that they were incidents separate and apart from the rapes. See discussion above, Section III, and below, Section IV(F). See *also* Jury Instruction 10, on the definition of child molestation, and Jury Instruction 15, on the elements of molestation. Appendix D.

Finally, Jury Instruction 15 affirmatively included the elements of "sexual contact" and sexual gratification – which are

usually elements only of molestation but not of rape – as elements of rape, also. This further collapsed the molestation crimes charged in Counts V and VI into the rape crimes charged in Counts I-IV. See Section IV(B), below.

C. The Evidence Did not Cure These Problems

A review of the transcripts reveals the reason for this lack of clarity in the Information and jury instructions. They show that the evidence on all the charges was presented together as a package, with no real differentiation between the dates or times of any of the charged acts. They also show that the state never clarified which count referred to which act in its closing argument.

The first person who testified about the alleged rapes and molestations was Leatumalo Lefao. 6/5/01 VRP:211. She is related to the alleged victims, and testified that they call her “auntie.” VRP:215. She said that her cousin Pollard “came up to me and he said that I have something I need to tell somebody.” He was 13 or 14 at the time, and he “said to me that he spent the night over at the defendant’s grandmother’s house with them, and he heard Richie crying. He looked over, and he seen Dynamite booty-fucking Richie.” VRP:217-18. She gave no more description of this disclosure, or the dates of the alleged rapes. On redirect

examination by the state, the best she could estimate was that Pollard told her this during the summer of 1995 or 1996. VRP:228.

The mother of the allegedly abused children – Bonnie Timoteo – was equally vague about dates and times. 6/6/01 VRP:237. She testified that in August of 1998, she was first told “That my son Richard was being raped by his cousins.” VRP:243. She continued that she was told by an aunt on the father’s side. VRP:244. She asked her child Richard, she said, and he finally told her, “they were doing it to both me and my brother.” VRP:245. Richard said the cousins would do “stupid things to them while they’re sleeping.” VRP:248.

Nurse Practitioner Cheryl Hann-Truscott then gave additional testimony about what the children had told her. VRP:302. She testified that she examined Richard and Reynold on Sept. 15, 1998, and that they said that their last contact with the perpetrator was in June of 1998. VRP:313-15. Richard said that the people who did it were Donald, Dynamite, and Dean. VRP:319. Richard said it happened “A bunch of times.” VRP:320. He also told her that it started when he was 5 or 6. VRP:321. She then gave details about the touching. VRP:329-37. But she did not give details about the dates or the number of times, and she did not

provide anything to differentiate one time from another.

Another witness, Leah Hill, who had known the two children since they were one and two years old, gave similar testimony. She stated that the boys' mother, Bonnie, had called and told her that the boys had been raped. VRP:355. Then one day when she was living with Bonnie, Reynold was awake when she came in from work, and Reynold told her essentially the same thing. He continued that the cousins all do nasty things to him, but that even though he told on them and Dynamite got in trouble, Reynold still had to go back down and play with them. VRP:354-58. The dates of these alleged occurrences were not documented.

One of the children, Richard, then testified. 6/6/01 VRP:366. He stated that this abuse occurred when he was 5 or 6 years old. VRP:375. He continued that it happened, "More than once." VRP:376. He further testified that he could not say how long it occurred and that it was "different time limits" VRP:378. His testimony about the times was no more specific than this: "He would do it more than once in the basement and a couple time in my auntie's room." VRP:383. Richard continued that Mr. Salavea would do the same things to his brother. VRP:385.

The other child, Reynold, gave similar testimony. VRP:404.

He stated that when he was at his grandmother's house in the basement, "My cousins would touch me." VRP:408. He said that it was both Dynamite and Donald. *Id.* He continued, "He would come up behind me and put his thing on my behind." VRP:410. He did not testify that Mr. Salavea anally raped him; in fact, he testified that he could not remember Dynamite putting his "front private" into his anus. VRP:420. Reynold continued that he would remember that if it had happened. *Id.* Regarding timing, he testified that all these instances of abuse – without differentiating between the ones that Mr. Salavea supposedly committed and the ones that other cousins committed – ended when he was seven years old. VRP:425.

State's witness Jennifer Chavez, a friend of Bonnie's, did not provide any greater clarity concerning the dates. She testified that Bonnie told her one of her boys was molested. 6/7/01 VRP:440. She further testified that Richard once told her something similar. VRP:446. But Reynold never confided in her about such abuse. VRP:452.

The only other person who testified about timing was Jennifer Knight, a child interviewer for Multicare, at Mary Bridge Hospital. 6/7/01 VRP:455. She said that she was a child

interviewer with the Pierce County Prosecuting Attorney's office for several years, and interviewed Richard during that time. VRP:456. She testified about Richard's description of the touching, which could be interpreted to include oral and anal penetration. VRP:474-77. She said that it happened: "A ton of times." *Id.*

Knight also interviewed Reynold. VRP:491. Knight testified that Reynold told her, "He stuck his private in my private." VRP:492.

The state dealt with this vague evidence about timing in closing argument by arguing about all the supposed events of sexual abuse in general terms, without separating out any one or two times. VRP:589. The deputy prosecutor asked the jury to convict Mr. Salavea on all counts, stating without specifying dates or times, "We know from the children that these acts occurred on multiple times. The children couldn't give a specific date. They couldn't say this happened December of 1997, but Richard testified that the only times these things didn't happen was when the defendant wasn't at Grandma's house." VRP:607.

Based on this testimony, there was certainly evidence of rape and molestation involving Richard. There was evidence of molestation and a denial of rape involving Reynold. There was no

specification of dates or times when each specific count supposedly occurred. There was no differentiation between the counts by date, place, or in any other manner. The evidence and argument did not even tell the jury whether these events supposedly occurred during the time covered by the 1996 Sentencing Guidelines or the 1998 Sentencing Guidelines. Basically, there was testimony about sexual abuse and testimony about several times but nothing to differentiate Count I from Count II or Count VI, or Count III from Count IV or Count V.

D. The Jury Instructions Exacerbated the Problem

The jury instructions made the problem worse.

The state submitted its proposed jury instructions on June 7, 2001. Appendix C. The relevant instructions, exacerbating the double jeopardy problem, are:

Rape of Child 1^o - elements – Count I (WPIC 44.11)
Rape of Child 1^o - elements – Count II (WPIC 44.11)
Rape of Child 1^o - elements – Count III (WPIC 44.11)
Rape of Child 1^o - elements – Count IV (WPIC 44.11)
Child Molestation 1^o - elements – Count V (WPIC 44.21)
Child Molestation 1^o - elements – Count VI (WPIC 44.21)

Appendix C.

The state's proposed Instruction No. 13, concerning Count II, contains nothing to differentiate it from Instruction No. 12,

concerning Count I. The state's proposed Instruction No. 14, concerning Count III, has nothing to differentiate it from Instruction No. 15, concerning Count IV. The state's proposed molestation instructions, Nos. 17-18, contain nothing to differentiate those incidents from the rapes.

The same is true of the Court's Instructions to the Jury. Appendix D. Instructions Numbers 11-14, on rape of a child Counts I-IV, distinguish between the crimes by victim, but not in any other way, so the two rape counts charged per victim might have been based on the exact same conduct with respect to each victim.

Even the "unanimity" instruction, which sometimes cures problems like this, did not help. The unanimity instruction, Instruction, No. 6, instead stated only, "To convict the defendant, one or more particular acts must be proved ..." But given the identity of Counts I and II, and III and IV, this still allowed the jury to convict you of two crimes for just one act.

The Verdict forms did not correct the error, either. Those forms, filed June 12, 2001, Appendix E, provided:

Verdict Form A

"We, the jury, find the defendant guilty of the crime of Rape of a Child in the First Degree as charged in Count I."

Verdict Form B

"We, the jury, find the defendant guilty of the crime of Rape of a Child in the First Degree as charged in Count II."

Verdict Form C

"We, the jury, find the defendant guilty of the crime of Rape of a Child in the First Degree as charged in Count III."

Verdict Form D

"We, the jury, find the defendant guilty of the crime of Rape of a Child in the First Degree as charged in Count IV."

Verdict Form E

"We, the jury, find the defendant guilty of the crime of Child Molestation in the First Degree as charged in Count V."

Verdict Form F

"We, the jury, find the defendant guilty of the crime of Rape of a Child in the First Degree as charged in Count VI."

Under the controlling authority of *State v. Mutch*, 171 Wn.2d 646, 254 P.3d 803, discussed below at Argument Section IV(E), these jury verdict forms are so general that they do not correct the problem, either.

E. Charging Identical Crimes in Counts I and II and Counts III and IV in this Manner Violates Double Jeopardy Clause Protections

The Information thus contains counts that are exact duplicates of each other. Counts I and II, and then Counts III and IV, charge exactly the same thing (child rape in the first degree, on the same dates, involving the same victim).

The double jeopardy clauses of the state and U.S. constitutions, however, protect against multiple punishments for the same offense. *State v. Mutch*, 171 Wn.2d 646 (applying this protection to charging Information and jury instructions that permitted conviction of the same sex crimes involving the same victim for the same acts) (citations omitted); U.S. Const. amend. V; Wash. Const. art. I, § 9. CrR 4.3(a) also mandates that each count charge a different offense.

Thus, an Information that lists multiple charges in the same language, without differentiation by statute, date, time, place, or victim, is impermissible; it provides no means by which to differentiate one conviction from another. See *State v. Heaven*, 127 Wn. App. 156, 110 P.3d 835 (2005) (where charging information failed to differentiate one sex count from another and defendant was acquitted of two counts but a mistrial was declared on third count, state could not retry on the third count because of the “possibility” that a jury would convict based on acts previously acquitted); *Valentine v. Konteh*, 395 F.3d 626 (6th Cir. 2005) (affirming grant of petition for writ of habeas corpus because state violated right to due process by charging and proving two “carbon-copy” counts of child rape, each of which was identically worded “so that there was no differentiation

among the charges and 20 counts of felonious sexual penetration, each of which was also identically worded”).

Further, as the Washington Supreme Court recognized only recently in *State v. Mutch*, 171 Wn.2d 646, 661-62, “vague jury instructions” can create this double jeopardy problem, also. They will create such a problem where the instructions “failed to include sufficiently distinctive ‘to convict’ instructions or an instruction that each count must be based on a separate and distinct criminal act.” *Mutch*, at 662 (citations omitted).

The charging instrument in this case presents just such a problem – Counts I and II are identical and Counts III and IV are identical. The jury instructions and verdict forms in this case, proposed by the prosecution, exacerbate this problem. They permit conviction based on the exact same act for Counts I and II, and then for Counts III and IV.

The *Mutch* court ruled that this violates double jeopardy. It then asked whether other jury instructions might have cured this problem. It examined the standard unanimity instruction and the “separate crime is charged in each count” instruction, which parallel the instructions given in Mr. Salavea’s case. It ruled that neither of those instructions cured the problem, because neither of them

specifically told the jury that a separate act had to form the basis for each of the separate charges for them to convict:

The *Mutch* jury was further instructed that

[“][a] separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.[“]

... The Court of Appeals has specifically held that *this separate crime instruction is not saving, noting that it still fails to “inform[] the jury that each ‘crime’ required proof of a different act.” State v. Borsheim*, 140 Wash.App. 357, 367, 165 P.3d 417 (2007); see *Berg*, 147 Wash.App. at 935, 198 P.3d 529. We agree. Finally, *Mutch*’s jury was instructed to “deliberate with a view to reaching a unanimous verdict,” though it was also told that “you must decide *the case* for yourself.” ...

The jury instructions in *Mutch*’s case were lacking for their failure to include a “separate and distinct” instruction; we agree with the *Berg* and *Carter* courts to the extent that they found similar instructions to be flawed.

Id., 171 Wn.2d at 662-63 (footnotes and citations omitted) (initial emphasis added). The state Supreme Court thus ruled that such jury instructions which fail to require the jury to find that a different act forms the basis for each count are “flawed,” even when a “unanimity” instruction and a “separate crime is charged in each count” instruction are also given.

An examination of the unanimity instruction given in Mr.

Salavea's case confirms that the *Mutch* analysis should apply here.

That *Salavea* unanimity instruction stated:

There are allegations that the defendant committed acts of Rape of Child in the First Degree and Child Molestation in the First Degree on multiple occasions. To convict the defendant, one or more particular acts must be proved beyond a reasonable doubt and you must unanimously agree as to which act or acts have been proved beyond a reasonable doubt. You need not unanimously agree that all the acts have been proved beyond a reasonable doubt.

Instruction No. 6, Appendix D. While this instruction might have ensured that the jury agreed unanimously on the acts supporting each count, here as in *Mutch* it did not ensure that the jury agreed unanimously that the acts supporting Counts I and II differed from those acts supporting counts III and IV.

The *Mutch* court then asked whether this error was harmless. It reviewed the charging instrument, the instructions, and the evidence, and concluded that since the evidence clearly supported several separate crimes and since the arguments clearly discussed several separate crimes, the instructional error was harmless. But it clarified two things about the scope of its review. First, it made clear that its review for harmless error was "rigorous and among the strictest": "While the court may look to the entire trial record when considering a double jeopardy claim, we note that

our review is rigorous and is among the strictest.” *Mutch*, at 664. Second, it stated that it was not resolving the question of whether its harmless inquiry was actually a part of the initial determination of whether a double jeopardy violation occurred in the first place, or a part of the process for deciding whether such an error warranted relief.¹ It simply ruled that because a review of the entire record showed that the evidence and arguments clearly differentiated between the acts alleged as a basis for each count, that was the “rare case” where they were “convinced beyond a reasonable doubt” that the “flawed” instructional language did not require a remedy. *Id.* at 665-66 (“*Mutch’s* case presents a rare circumstance where, despite deficient jury instructions, it is nevertheless manifestly apparent that the jury found him guilty of five separate acts of rape to support five separate convictions. In fact, we are convinced beyond a reasonable doubt, based on the

¹ *Id.*, 171 Wn.2d at 664-65 (“We note here that our holding would be the same whether we rigorously considered the entire trial record to decide if the jury instructions, in light of the full record, actually effected a double jeopardy error or if we held the instructions to be erroneous because of the risk of error and then reviewed for harmless. As a result, this case does not provide an occasion for us to determine the exact review process for double jeopardy claims arising out of jury instructions, only that we follow the precedent of our other double jeopardy cases, which instructs us to look at all the facts of the case.”) (footnote omitted).

entire record, that the jury instructions did not actually effect a double jeopardy violation.”)²

Mr. Salavea’s case is not one of those “rare cases.” The evidence was admitted in support of all the counts at once with just generic testimony stating that rapes happened more than one time³ and the instructions made no distinction between counts. Thus, the *Mutch*, *Hayes* and *Noltie* decisions cannot save the convictions in this case.

Instead, in Mr. Salavea’s case, the duplicative charges and vague instructions confused the factual basis for each crime. No instruction to the jury cured this problem; the unanimity instruction assured unanimity on the acts constituting each charge, but not that the act constituting one charge necessarily differed from the act constituting any other charge. Following *Mutch*, either Count I or II, and either Count III or IV, must be vacated.

² See also *State v. Hayes*, 81 Wn. App. 425, 914 P.2d 788, review denied, 130 Wn.2d 1013 (1996). Accord *State v. Noltie*, 116 Wn.2d 831, 839, 809 P.2d 190 (1991) (permitting reviewing court to look at evidence admitted in support of each count, rather than just language of counts, in deciding whether they are multiplicitous).

³ We are filing a motion to transfer the VRP of the trial from Mr. Salavea’s appeal to this PRP for ease of reference.

F. Based on the Charges and Instructions, Counts V and VI Duplicated Rape Counts I-IV and Hence They also Violated Double Jeopardy Clause Protections Counts V and VI

The molestation counts must also be vacated. Count V charged child molestation in the first degree involving victim R.U.T. – alleging the same victim on the same dates as those listed in Counts III and IV. Count VI charged child molestation in the first degree involving the victim R.K.T. – alleging the same victim on the same dates as those listed in Counts I and II.

Child molestation in the first degree is generally not considered a lesser included offense of child rape in the first degree, because usually each crime contains an element that the other one lacks: first-degree rape contains the element of penetration which molestation does not, and first-degree molestation contains the element of “sexual contact” for the purpose of sexual gratification, which rape does not. *State v. French*, 157 Wn.2d 593, 610-11. Since each crime contains one element that the other does not, they are not usually considered greater and lesser offenses. *Id.* (citations omitted).

In this case, however, that difference did not exist. It is true that Instruction No. 7 told the jury that they had to find that Mr.

Salavea committed sexual intercourse, including penetration, to convict him of first degree rape of a child, and that that element was lacking from the charge and the instructions on first degree child molestation. Jury Instruction No. 7, Appendix D. But it is not true that the molestation charges against Mr. Salavea contained an element of "sexual contact" with its sexual gratification purpose that the rape charge lacked.

Instead, Jury Instruction Nos. 8 and 10 told the jury that "sexual contact" and sexual gratification were elements of child rape in the first degree, also. They did so by defining "sexual intercourse," the element of first-degree child rape, as follows:

Sexual intercourse means any act of *sexual contact* between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

Jury Instruction No. 8, Appendix D (emphasis added). As the emphasized material shows, according to this definition, "sexual intercourse" is defined as a type of "sexual contact." "Sexual contact," which is technically only an element of child molestation but not child rape, was in turn defined, in the portion of the instructions containing the definitions relevant to child rape, as follows:

Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desires of either party or a third party.

Jury Instruction No. 10, Appendix D (emphasis added). As the emphasized material shows, "sexual contact" means the described contact when done for "the purpose of gratifying sexual desires of either party or a third person."

Thus, according to these instructions, "sexual contact" and the *mens rea* of sexual gratification were elements of both rape of a child in the first degree and child molestation in the first degree. The state even requested the instruction defining "sexual intercourse" as a type of "sexual contact" with its sexual gratification element. Appendix C, Ninth requested instruction, citing WPIC 45.01.

Interestingly, the WPIC comment to WPIC 45.01 notes this exact problem, and advises that no definition of "sexual contact" be given when this definition of "sexual intercourse" is used for rape, to avoid inserting this element of sexual gratification into rape:

COMMENT

RCW 9A.44.010(1).

The phrase "sexual contact" in the last paragraph comes from 9A.44.010(1)(c), and it is

specifically a part of the definition of sexual intercourse. In this context, the term "sexual contact" should not be further defined with the statutory definition found in RCW 9A.44.010(2). Incorporating the statutory definition of "sexual contact" into the instruction above would improperly add a specific intent requirement ("for purposes of sexual gratification") to the crime of rape. Sexual gratification is not an element of the charge of rape, whether it is committed through sexual intercourse in the ordinary sense or through oral-genital or anal-genital contact. *State v. Gurrola*, 69 Wn. App. 152, 848 P.2d 199 (1993); *State v. Brown*, 78 Wn. App. 891, 899 P.2d 34 (1995).

WASHINGTON PATTERN JURY INSTRUCTIONS CRIMINAL (3d edition).
Vol. 11, WPIC 45.01, Comment, pp. 831-32.

What is the effect of the state's decision to request this instruction, and the fact that the court gave that instruction? Since the state requested the instruction, and the court gave it, and the jury was bound by it, the elements listed in it must now be considered the elements of the rape crimes that the jury convicted Mr. Salavea of under the law of the case doctrine. "[U]nnecessary elements become the law of the case only after they have been included in the jury instructions." *State v. Hull*, 83 Wn. App. 786, 797-98, 924 P.2d 375 (1996), *review denied*, 131 Wn.2d 1016 (1997). And, as the state Supreme Court has explained, because of that doctrine, "jury instructions not objected to become the law of

the case.” *State v. Hickman*, 135 Wn.2d 97, 102, 954 P.2d 900 (1998). Because of that, the state assumes the burden of proving even such elements without a statutory basis, if they are included in the instructions to the jury. *Hickman*, 135 Wn.2d at 102. They then become elements for all purposes – a defendant can even assign error to non-statutory elements if they were added to the “to convict” instruction at trial. *Id.*, at 102. This includes challenging the sufficiency of evidence proving the added element. *Id.*⁴

That means that in Mr. Salavea’s case, child molestation did not have an element that child rape lacked, because the sexual gratification purpose was an element of both offenses. Only rape had one element that molestation did not have – the element of

⁴ The fact that the additional element in Mr. Salavea’s case appeared in a definitional instruction, defining words used in the to convict instruction, rather than appearing directly in the to convict instruction, does not change this result, because the law of the case doctrine is not limited to “to convict” instructions. Instead, it applies “whether the instruction in question was rightfully or wrongfully given, it was binding and conclusive upon the jury, and constitutes upon this hearing the law of the case.” *Pepperall v. City Park Transit Co.*, 15 Wash. 176, 180, 45 P. 743, 46 P. 407 (1896), *overruled on other grounds*, *Thornton v. Dow*, 60 Wash. 622, 111 P. 899 (1910). It even applies to definitional instructions, like the “sexual intercourse” and “sexual contact” definitions in this case. *Scoccolo Constr., Inc. v. City of Renton*, 158 Wn.2d 506, 522–23, 145 P.3d 371 (2006) (Madsen, J., concurring) (debatable definition of element used in instructions became law of the case); *Englehart v. Gen. Elec. Co.*, 11 Wn. App. 922, 923, 527 P.2d 685 (1974) (definition of accidental death was law of the case).

penetration. As charged in this case, then, both molestation charges (Counts V and VI) were lesser included offenses of the rapes charged in Counts I-IV, because they contained a subset of the elements of the rapes charged in those Counts I-IV. See *State v. Freeman*, 153 Wn.2d 765, 772 (citing *Blockburger v. United States*, 284 U.S. 299).

Both Counts V and VI must therefore be vacated.

G. The Errors Mattered

The errors mattered. They allowed the jury to convict Mr. Salavea of four counts of the Class A felony of rape of a child in the first degree, rather than two, and of two additional counts of child molestation in the first degree.

That meant that at his sentencing hearing, the trial court used an offender score of 17, based on prior and current criminal convictions. The trial court also seemed to use the version of the Sentencing Guidelines that were in effect in 1998 – despite the fact that Mr. Salavea was charged with offenses spanning February of 1996 through June of 1998 and there was no specification of the date on which any such offense occurred, so the more lenient 1996 manual should have applied, instead. Using those newer Guidelines, the trial court ruled that with an offender score of 17,

and a seriousness level of XII for child rape in the first degree, the standard range for the crimes of child molestation in the first degree was 149-198 months and the standard range for the crimes of child rape in the first degree was 240-318 months. Mr. Salavea was sentenced to 280 months.

If the trial court had instead used the correct 1996 Guidelines, and only Counts II and IV had been counted, the offender score would have been reduced by 4 x 3 or 12, to a score of 5, and the range for the rape crimes would have been 120-158 months under the 1996 Guidelines or 138-164 months under the 1998 Guidelines.

If, instead, the convictions on only two crimes are vacated, Mr. Salavea would be left with an offender score of 11. That produces the same standard sentence range as an offender score of 17, that is, 210-280 months using the 1996 Guidelines. Mr. Salavea's sentence falls at the top of this overlapping range.

Relief would still have to be granted, even if only two convictions rather than four are vacated, for three reasons. First, unconstitutional convictions of Class A felonies produce numerous significant, adverse, collateral consequences that are considered "restraints" sufficient to require personal restraint petition relief –

even if they do not directly increase the sentence.⁵

Next, the “concurrent sentence” doctrine was overturned 25 years ago in *Ball v. United States*, 470 U.S. 856, 864-65, 105 S.Ct. 1668, 84 L.Ed.2d 740 (1985), rejecting the “concurrent sentence” reason for declining to provide relief and requiring appellate courts to review all challenged convictions regardless of whether the sentences on challenged counts run concurrently with sentences on unchallenged counts.

And finally, the Supreme Court has held that unconstitutionally obtained convictions cannot be considered at sentencing, even in cases where they do not increase a sentence Guidelines range.⁶ A conviction obtained in violation of the double

⁵ *In re Personal Restraint of Powell*, 92 Wn.2d 882, 887-888, 602 P.2d 711 (1979) (finding the following to be cognizable restraints flowing from a conviction: “collateral consequences” of conviction being counted in recidivist prosecutions; effect on the parole process and “future minimum sentences and actual time served”; stigma and other “difficulties for a former prisoner trying to reestablish himself or herself with society upon release ...”). See also *In re Personal Restraint of Richardson*, 100 Wn.2d 669, 670, 675 P.2d 209 (1983), *overruled on other grounds*, *State v. Dhaliwal*, 150 Wn.2d 559, 79 P.3d 432 (2003) (murder defendant had “completely served” his sentence, but relief available to “remove a serious blot from his record”).

⁶ *United States v. Tucker*, 404 U.S. 443, 447, 92 S.Ct. 589, 30 L.Ed.2d 592 (1972); *Townsend v. Burke*, 334 U.S. 736, 741, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948) (unconstitutionally obtained prior

jeopardy clause is unconstitutionally obtained and, hence, cannot be considered at all at sentencing. This could certainly inform the district court's discretion about where within the proper range the sentence should fall, at a resentencing hearing.

V. THE ONE-YEAR TIME LIMIT DOES NOT APPLY, BECAUSE THIS PRP ALLEGES A VIOLATION OF DOUBLE JEOPARDY CLAUSE PROTECTIONS

The one-year time limit for filing a PRP does not apply to claims based on the double jeopardy clause. RCW 10.73.100(3). Thus, there is no time limit applicable to these claims.

VI. CONCLUSION

This PRP should be granted; two of the rape convictions and both of the molestation convictions should be vacated; and the case should be remanded for resentencing.

DATED this 30th day of November, 2011.

Respectfully submitted,



Sheryl Gordon McCloud
WSBA No. 16709
Attorney for Dynamite Salavea

convictions are "materially untrue," inadmissible, information).

CERTIFICATE OF SERVICE

I certify that on the 30th day of November, 2011, a true and correct copy of the foregoing PRP OPENING BRIEF was served upon the following individual by depositing same in the United States Mail, first class, postage prepaid:

Mark Lindquist, Prosecutor
Pierce County Prosecutor's Office
Appellate Unit
930 Tacoma Avenue South
Tacoma WA 98402-2171



Sheryl Gordon McCloud

APPENDIX

A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA aka PALE TUUPO,

Defendant.

CAUSE NO. 00-1-05147-8

INFORMATION

OCT 25 2000

FILED
IN COUNTY CLERK'S OFFICE

A.M. OCT 25 2000 P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

DOB: 10/09/1982

SEX: MALE

RACE: ASIAN/PACIFIC ISLAND

SS#: UNKNOWN

SID#: WA18275619

DOL#: UNKNOWN

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DYNAMITE SALAVEA aka PALE TUUPO of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows:

That DYNAMITE SALAVEA AKA PALE TUUPO, in Pierce County, during the period from February, 1996 through June, 1998, did unlawfully and feloniously being at least 24 months older than R.K.T., engage in sexual intercourse with R.K.T., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

COUNT II

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DYNAMITE SALAVEA aka PALE TUUPO of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DYNAMITE SALAVEA aka PALE TUUPO, in Pierce County, during the period from February, 1996 through June, 1998, did unlawfully and feloniously being at least 24 months older than R.K.T., engage in sexual intercourse with R.K.T., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

INFORMATION - 1

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

ORIGINAL

COUNT III

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DYNAMITE SALAVEA aka PALE TUUPO of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DYNAMITE SALAVEA AKA PALE TUUPO, in Pierce County, during the period from February, 1996 through June, 1998, did unlawfully and feloniously being at least 24 months older than R.U.T., engage in sexual intercourse with R.U.T., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

COUNT IV

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DYNAMITE SALAVEA aka PALE TUUPO of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DYNAMITE SALAVEA aka PALE TUUPO, in Pierce County, on or about during the period from February, 1996 through June, 1998, did unlawfully and feloniously being at least 24 months older than R.U.T., engage in sexual intercourse with R.U.T, who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

COUNT V

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DYNAMITE SALAVEA aka PALE TUUPO of the crime of CHILD MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DYNAMITE SALAVEA AKA PALE TUUPO, in Pierce County, on or about during the period from February, 1996 through June, 1998, did unlawfully and feloniously, being at least 36 months older than R.U.T, have, or knowingly cause another person under the age of eighteen to have, sexual contact with R.U.T, who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

COUNT VI

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DYNAMITE SALAVEA aka PALE TUUPO of the crime of CHILD MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

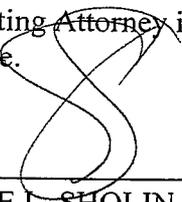
That DYNAMITE SALAVEA AKA PALE TUUPO, in Pierce County, on or about during the period from February, 1996 through June, 1998, did unlawfully and feloniously, being at least 36 months older than R.K.T, have, or knowingly cause another person under the age of eighteen to have, sexual contact with R.K.T., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

DATED this 25th day of October, 2000.

TACOMA POLICE DEPT CASE
WA02703

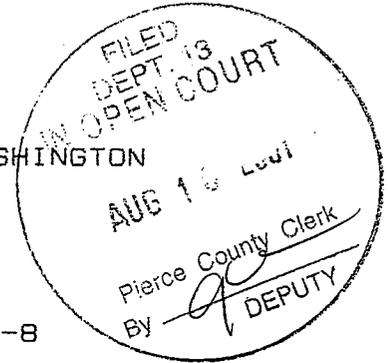
JOHN W. LADENBURG
Prosecuting Attorney in and for said County
and State.

jlg

By: 
SUE L. SHOLIN
Deputy Prosecuting Attorney
WSB#: 21333

APPENDIX

B



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff,

CAUSE NO.00-1-05147-8

JUDGMENT AND SENTENCE (JS)

vs.

DYNAMITE SALAVEA,
Defendant.

- Prison
- Jail One year or less
- First Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Breaking The Cycle (BTC)

DOB: 10/09/1982
SID NO.: WA18275619

I. HEARING

1.1 A sentencing hearing in this case was held on 8/10/01 and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 6/12/01 by plea jury-verdict bench trial of:

Count No.: I
Crime: RAPE OF A CHILD IN THE FIRST DEGREE, Charge Code: (I36)
RCW: 9A.44.073
Date of Crime: 02/96-06/98
Incident No.: TACOMA POLICE DEPT. 982390752

Count No.: II
Crime: RAPE OF A CHILD IN THE FIRST DEGREE, Charge Code: (I36)
RCW: 9A.44.073
Date of Crime: 02/96-06/98
Incident No.: TACOMA POLICE DEPT. 982390752

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

1
2
3 Count No.: III
 Crime: RAPE OF A CHILD IN THE FIRST DEGREE, Charge Code: (I36)
 4 RCW: 9A.44.073
 Date of Crime: 02/96-06/98
 5 Incident No.: TACOMA POLICE DEPT. 982390752

6 Count No.: IV
 Crime: RAPE OF A CHILD IN THE FIRST DEGREE, Charge Code: (I36)
 7 RCW: 9A.44.073
 Date of Crime: 02/96-06/98
 8 Incident No.: TACOMA POLICE DEPT. 982390752

9 Count No.: V
 Crime: CHILD MOLESTATION IN THE FIRST DEGREE, Charge Code:
 10 (I39A)
 RCW: 9A.44.083
 11 Date of Crime: 02/96-06/98
 Incident No.: TACOMA POLICE DEPT. 982390752

12 Count No.: VI
 Crime: CHILD MOLESTATION IN THE FIRST DEGREE, Charge Code:
 13 (I39A)
 RCW: 9A.44.083
 14 Date of Crime: 02/96-06/98
 15 Incident No.: TACOMA POLICE DEPT. 982390752

16 as charged in the Original Information.

- 17 [] A special verdict/finding for use of a **firearm** was returned on
 Count(s)_____. RCW 9.94A.125, .310.
 18 [] A special verdict/finding for use of **deadly weapon other than a**
firearm was returned on Count(s)_____.RCW 9.94A.125, .310.
 19 [] A special verdict/finding of **sexual motivation** was returned on
 Count(s)_____. RCW 9.94A.127.
 20 [] A special verdict/finding for **violation of the Uniform Controlled**
Substances Act was returned on Count(s)_____, RCW 69.50.401 and RCW
 21 69.50.435, taking place in a school, school bus, or within 1000
 22 feet of the perimeter of a school grounds or within 1000 feet of a
 school bus route stop designated by the school district; or in a
 23 public park, public transit vehicle, or public transit stop
 shelter; or in, or within 1000 feet of the perimeter of, a civic
 center designated as a drug-free zone by a local government
 24 authority, or in a public housing project designated by a local
 government authority as a drug-free zone.
 25 [] A special verdict/finding that the defendant committed a crime
 involving the manufacture of **methamphetamine when a juvenile was**
 26 **present in or upon the premises of manufacture** was returned on
 Count(s) _____. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.

27
28 JUDGMENT AND SENTENCE (JS)
 (Felony)(6/2000)

[] The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.

[] This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

[] The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.129.

[] The crime charged in Count(s) _____ involve(s) **domestic violence**.

[] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):

[] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

<u>Crime</u>	<u>Date of Sentence</u>	<u>Sentencing Court (County & State)</u>	<u>Date of Crime</u>	<u>Adult or Juv</u>	<u>Crime Type</u>
RK DRIV/PSP2	01/29/97	PIERCE CO. WA	11/01/96	JUV	NV
PSP1	03/14/97	PIERCE CO. WA	12/09/96	JUV	NV
PSP1	10/29/97	PACIFIC CO. WA	12/12/96	JUV	NV
TMVWOP	03/17/98	PIERCE CO., WA	01/31/98	JUV	NV
ROB2	11/30/00	PIERCE CO., WA	09/14/00	ADULT	V

[] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360

[] the court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

[] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

2.3 SENTENCING DATA:

Count	Offender Score	Serious Level	Standard Range (w/o enhancement)	Plus Enhancement*	Total Standard Range	Maximum Term
I	17	XII	240-318		240-318	LIFE
II	17	XII	240-318		240-318	LIFE
III	17	XII	240-318		240-318	LIFE
IV	17	XII	240-318		240-318	LIFE
V	17	X	149-198		149-198	LIFE
VI	17	X	149-198		149-198	LIFE

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile Present.

2.4 EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows:

954 MTH DOC

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 The Court DISMISSES Count(s) _____. The defendant is found NOT GUILTY of Count(s) _____.

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

[] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed order may be entered. RCW 9.94A.142. A restitution hearing:

[~~] shall be set by the prosecutor
[] is scheduled for August 31, 2001~~

[] RESTITUTION. See attached order.

[] Restitution ordered above shall be paid jointly and severally with:

<u>NAME OF OTHER DEFENDANT</u>	<u>CAUSE NUMBER</u>	<u>VICTIM NAME</u>	<u>AMOUNT-\$</u>

[] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010.

[X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.145.

[] In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145.

[] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

[X] The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.2 [] HIV TESTING. The health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

[] DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

① R.K.T. - 2/27/90
② R.U.T. - 2/24/91

4.3 The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 20 (twenty) years (not to exceed the maximum statutory sentence).
[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 OTHER: _____

4.4(a) Bond is hereby exonerated.

4.5 CONFINEMENT OVER ONE YEAR: The defendant is sentenced as follows:

(a) CONFINEMENT: RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>280</u> months on Count No. I	<u>280</u> months on Count No. II
<u>280</u> months on Count No. III	<u>280</u> months on Count No. IV
<u>280</u> months on Count No. V	<u>280</u> months on Count No. VI

Actual number of months of total confinement ordered is _____.
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3 above).

(b) CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.400. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [] The sentence herein shall run consecutively to the felony sentence in cause number(s) _____

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

43 days served

4.6 **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

- Count I for 36 months;
- Count II for 36 months;
- Count III for 36 months;
- Count IV for 36 months;
- Count V for 36 months;
- Count VI for 36 months;

COMMUNITY CUSTODY (post 6/30/00 offenses) is ordered as follows:

- Count I for a range from _____ to _____ months;
- Count II for a range from _____ to _____ months;
- Count III for a range from _____ to _____ months;
- Count IV for a range from _____ to _____ months;
- Count V for a range from _____ to _____ months;
- Count VI for a range from _____ to _____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120 for community placement/custody offenses-- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education,

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[] The defendant shall not consume any alcohol.
[] Defendant shall have no contact with: _____
[] Defendant shall remain [] within [] outside of a specified geographical boundary, to-wit: _____

[] The defendant shall participate in the following crime-related treatment or counseling services: _____

[] The defendant shall undergo an evaluation for treatment for [] domestic violence [] substance abuse [] mental health [] anger management and fully comply with all recommended treatment.

[] The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

4.7 [] **WORK ETHIC CAMP.** RCW 9.94A.137, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated in Section 4.6.

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

V. NOTICES AND SIGNATURES

5.1. COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030.

5.4. RESTITUTION HEARING. [V] Defendant waives any right to be present at any restitution hearing (defendant's initials): DS

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200.

5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard,

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

Cross off if not applicable:

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the State of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of the Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

1
2
3 Even if you lack a fixed residence, you are required to register.
4 Registration must occur within 24 hours of release in the county where
5 you are being supervised if you do not have a residence at the time of
6 your release from custody or within 14 days after ceasing to have a
7 fixed residence. If you enter a different county and stay there for
8 more than 24 hours, you will be required to register in the new county.
9 You must also report in person to the sheriff of the county where you
10 are registered on a weekly basis if you have been classified as a risk
11 level II or III, or on a monthly basis if you have been classified as a
12 risk level I. The lack of a fixed residence is a factor that may be
13 considered in determining a sex offender's risk level.

14
15 If you move to another state, or if you work, carry on a vocation, or
16 attend school in another state you must register a new address,
17 fingerprints, and photograph with the new state within 10 days after
18 establishing residence, or after beginning to work, carry on a
19 vocation, or attend school in the new state. You must also send
20 written notice within 10 days of moving to the new state or to a
21 foreign country to the county sheriff with whom you last registered in
22 Washington State.

23 5.8 OTHER: _____

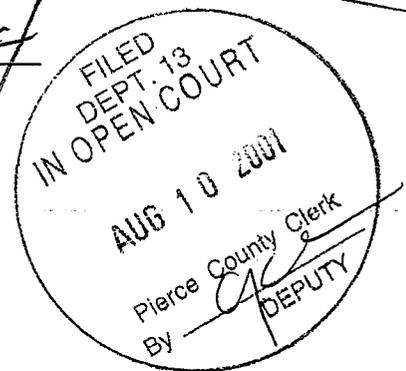
24 DONE in Open Court and in the presence of the defendant this date:

25 August 10, 2001.

26 Dani Clark
27 Deputy Prosecuting Attorney
28 Print Name:
29 WSB# 22262

KATHRYN J NELSON
30 JUDGE Print Name:
31 [Signature]
32 Attorney for Defendant
33 Print name:
34 WSB# 21424

35 [Signature]
36 Defendant
37 Print name: Dyanwite Salavea



38 JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

CERTIFICATE OF INTERPRETER

Interpreter signature/Print name: _____
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 00-1-05147-8

I, Ted Rutt, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the judgment and sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed on this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No.: WA18275619 Date of Birth: 10/09/1982
(If no SID take fingerprint card for WSP)

FBI No. NOT AVAILABLE Local ID No. _____

PCN No. _____ Other _____

Alias name, SSN, DOB: _____

Race:	Ethnicity:	Sex:
<input checked="" type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male
<input type="checkbox"/> Black/African-American	<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/> Female
<input type="checkbox"/> Caucasian		
<input type="checkbox"/> Native American		
<input type="checkbox"/> Other: _____		

jlg

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

_____ (I) The offender shall remain within, or outside of, a specified geographical boundary:

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals:

_____ (III) The offender shall participate in crime-related treatment or counseling services;

_____ (IV) The offender shall not consume alcohol;

_____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

_____ (VI) The offender shall comply with any crime-related prohibitions.

_____ (VII) Other: _____

FINGERPRINTS

Right four fingers taken simultaneously

Right thumb

Left four fingers taken simultaneously

Left thumb

I attest that I saw the same defendant who appeared in Court on this Document affix his or her fingerprints and signature thereto. Clerk of the Court, TED RUTT: _____, Deputy Clerk.

Dated: 8/10/01

DEFENDANT'S SIGNATURE: *Declined to sign*

DEFENDANT'S ADDRESS: *or complete*

DEFENDANT'S PHONE#: _____

FINGERPRINTS

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

STATE OF WASHINGTON]	Cause No.:
]	
	Plaintiff]	JUDGEMENT AND SENTENCE (FELONY)
	v.]	APPENDIX H
SALAVEA, DYNAMITE]	COMMUNITY PLACEMENT / CUSTODY
	Defendant]	
]	
DOC No. 827880]	

The court having found the defendant guilty of offense(s) qualifying for community placement, it is further ordered as set forth below.

COMMUNITY PLACEMENT/CUSTODY: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after June 6, 1996 to community placement/custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, but before June 6, 1996, to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community placement/custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

9. Submit to HIV and DNA testing as required by law.
10. Register as a Sex Offender pursuant to statute with the sheriff of the county of residence.
11. Inform supervising CCO and/or treatment provider of any romantic relationships to verify there are no victim-aged children involved.
12. Submit to urinalysis and/or breathalyzer testing as directed by CCO.

DATE

JUDGE, PIERCE COUNTY SUPERIOR COURT

APPENDIX C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

5 JUN 12 2001

***PLAINTIFF'S PROPOSED INSTRUCTIONS
TO THE JURY***

Before the Honorable Kathryn Nelson
Judge of the Superior Court
Department No. 13

Diane Clarkson
Deputy Prosecuting Attorney
Attorney for Plaintiff

Donald Lundahl
Attorney for Defendant



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

COURT'S INSTRUCTIONS TO THE JURY

DATED this _____ day of June, 2001.

JUDGE

INSTRUCTION NO. ____

Evidence that the defendant has previously been convicted of a crime is not evidence of the defendant's guilt. Such evidence may be considered by you in deciding what weight or credibility should be given to the testimony of the defendant and for no other purpose.

INSTRUCTION NO. ____

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendant of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the

testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

INSTRUCTION NO. ____

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses.

Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. ____

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff, and has the burden of proving each element of the crime beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. ____

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

INSTRUCTION NO. ____

There are allegations that the defendant committed acts of Rape of a Child in the First Degree on multiple occasions. To convict the defendant, one or more particular acts must be proved beyond a reasonable doubt and you must unanimously agree as to which act or acts have been proved beyond a reasonable doubt. You need not unanimously agree that all the acts have been proved beyond a reasonable doubt.

INSTRUCTION NO. ____

There are allegations that the defendant committed acts of Child Molestation in the First Degree on multiple occasions. To convict the defendant, one or more particular acts must be proved beyond a reasonable doubt and you must unanimously agree as to which act or acts have been proved beyond a reasonable doubt. You need not unanimously agree that all the acts have been proved beyond a reasonable doubt.

INSTRUCTION NO. ____

A person commits the crime of rape of a child in the first degree when that person has sexual intercourse with another person who is less than twelve years old and who is not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

INSTRUCTION NO. ____

Sexual intercourse means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

INSTRUCTION NO. ____

Married means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in court for legal separation or for dissolution of the marriage.

INSTRUCTION NO. ____

Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desires of either party or a third party.

INSTRUCTION NO. ____

To convict the defendant of the crime of rape of a child in the first degree, as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That during the period from February, 1996 through June 1998, the defendant had sexual intercourse with R.K.T.;
- (2) That R.K.T. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That the defendant was at least twenty-four months older than R.K.T.; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. ____

To convict the defendant of the crime of rape of a child in the first degree, as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during the period from February, 1996 through June, 1998, the defendant had sexual intercourse with R.K.T.;

(2) That R.K.T. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That the defendant was at least twenty-four months older than R.K.T.; and

(4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. ____

To convict the defendant of the crime of rape of a child in the first degree, as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That during the period from February, 1996 through June, 1998, the defendant had sexual intercourse with R.U.T.;
- (2) That R.U.T. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That the defendant was at least twenty-four months older than R.U.T.; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. ____

To convict the defendant of the crime of rape of a child in the first degree, as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That during the period from February 1996, through June, 1998, the defendant had sexual intercourse with R.U.T.;
- (2) That R.U.T. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That the defendant was at least twenty-four months older than R.U.T.; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. ____

A person commits the crime of child molestation in the first degree when that person has sexual contact with another person who is less than twelve years old and who is not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

INSTRUCTION NO. ____

To convict the defendant of the crime of child molestation in the first degree, as charged in Count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That during the period from February 1996, through June, 1998, the defendant had sexual contact with R.U.T.;
- (2) That R.U.T. was less than twelve years old at the time of the sexual contact and was not married to the defendant;
- (3) That the defendant was at least thirty-six months older than R.U.T.; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. ____

To convict the defendant of the crime of child molestation in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That during the period from February 1996 through June 1998, the defendant had sexual contact with R.K.T. ;
- (2) That R.K.T. was less than twelve years old at the time of the sexual contact and was not married to the defendant;
- (3) That the defendant was at least thirty-six months older than R.K.T.; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. ____

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with these instructions, and a verdict form for each count.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty," according to the decision you reach.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror will sign it and notify the judicial assistant, who will conduct you into court to declare your verdict.

INSTRUCTION NO. ____

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM A

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Rape of a Child in the First Degree as charged in Count I.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM B

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Rape of a Child in the First Degree as charged in Count II.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM C

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Rape of a Child in the First Degree as charged in Count III.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM D

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Rape of a Child in the First Degree as charged in Count IV.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM E

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Child Molestation in the First Degree as charged in Count V.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM F

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Child Molestation in the First Degree as charged in Count VI.

PRESIDING JUROR

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

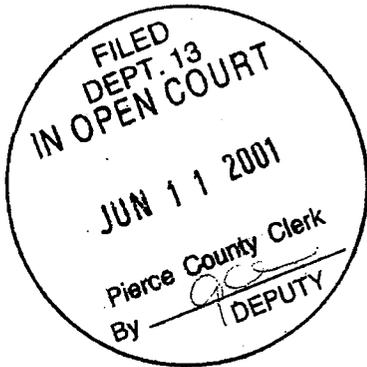
DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

COURT'S INSTRUCTIONS TO THE JURY

DATED this 11 day of June, 2001.



[Signature]
JUDGE

5 JUN 12 2001

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendant of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the

opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

INSTRUCTION NO. 2

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses.

Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff, and has the burden of proving each element of the crime beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

002167 1411

INSTRUCTION NO. 4

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

002167 1443

INSTRUCTION NO. 5

Evidence that the defendant has previously been convicted of a crime is not evidence of the defendant's guilt. Such evidence may be considered by you in deciding what weight or credibility should be given to the testimony of the defendant and for no other purpose.

INSTRUCTION NO. 6

There are allegations that the defendant committed acts of Rape of a Child in the First Degree and Child Molestation in the First Degree on multiple occasions. To convict the defendant, one or more particular acts must be proved beyond a reasonable doubt and you must unanimously agree as to which act or acts have been proved beyond a reasonable doubt. You need not unanimously agree that all the acts have been proved beyond a reasonable doubt.

INSTRUCTION NO. 7

A person commits the crime of rape of a child in the first degree when that person has sexual intercourse with another person who is less than twelve years old and who is not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

INSTRUCTION NO. 8

Sexual intercourse means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

INSTRUCTION NO. 9

Married means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in court for legal separation or for dissolution of the marriage.

INSTRUCTION NO. 10

Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desires of either party or a third party.

INSTRUCTION NO. 12

To convict the defendant of the crime of rape of a child in the first degree, as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That during the period from February, 1996 through June, 1998, the defendant had sexual intercourse with R.K.T.;
- (2) That R.K.T. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That the defendant was at least twenty-four months older than R.K.T.; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 13

To convict the defendant of the crime of rape of a child in the first degree, as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That during the period from February, 1996 through June, 1998, the defendant had sexual intercourse with R.U.T.;
- (2) That R.U.T. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That the defendant was at least twenty-four months older than R.U.T.; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 14

To convict the defendant of the crime of rape of a child in the first degree, as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That during the period from February 1996, through June, 1998, the defendant had sexual intercourse with R.U.T.;
- (2) That R.U.T. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That the defendant was at least twenty-four months older than R.U.T.; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 15

To convict the defendant of the crime of child molestation in the first degree, as charged in Count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That during the period from February 1996, through June, 1998, the defendant had sexual contact with R.U.T.;
- (2) That R.U.T. was less than twelve years old at the time of the sexual contact and was not married to the defendant;
- (3) That the defendant was at least thirty-six months older than R.U.T.; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 16

To convict the defendant of the crime of child molestation in the first degree, as charged in Count VI, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That during the period from February 1996 through June 1998, the defendant had sexual contact with R.K.T. ;
- (2) That R.K.T. was less than twelve years old at the time of the sexual contact and was not married to the defendant;
- (3) That the defendant was at least thirty-six months older than R.K.T.; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 17

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with these instructions, and a verdict form for each count.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty," according to the decision you reach.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror will sign it and notify the judicial assistant, who will conduct you into court to declare your verdict.

INSTRUCTION NO. 18

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM A

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Rape of a Child in the First Degree as charged in Count I.

PRESIDING JUROR

WASH STATE COURT REPORTERS & VIDEO

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM B

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Rape of a Child in the First Degree as charged in Count II.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM C

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Rape of a Child in the First Degree as charged in Count III.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM D

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Rape of a Child in the First Degree as charged in Count IV.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM E

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Child Molestation in the First Degree as charged in Count V.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM F

We, the jury, find the defendant _____ (Not Guilty or Guilty) of the
crime of Child Molestation in the First Degree as charged in Count VI.

PRESIDING JUROR

APPENDIX E

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM A

JUN 12 2001

We, the jury, find the defendant Guilty (Not Guilty or Guilty) of the
crime of Rape of a Child in the First Degree as charged in Count I.


PRESIDING JUROR

FILED
DEPT. 13
IN OPEN COURT
JUN 12 2001
Pierce County Clerk
By C. C. C.
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM B

JUN 12 2001

We, the jury, find the defendant Guilty (Not Guilty or Guilty) of the crime of Rape of a Child in the First Degree as charged in Count II.


PRESIDING JUROR

FILED
DEPT. 13
IN OPEN COURT
JUN 12 2001
Pierce County Clerk
By all /DEPUTY

21

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

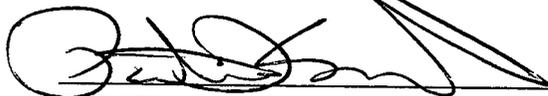
Defendant.

NO. 00-1-05147-8

VERDICT FORM C

JUN 12 2001

We, the jury, find the defendant Guilty (Not Guilty or Guilty) of the crime of Rape of a Child in the First Degree as charged in Count III.


PRESIDING JUROR

FILED
DEPT. 13
IN OPEN COURT
JUN 12 2001
Pierce County Clerk
By gc DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

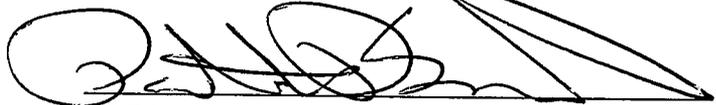
Defendant.

NO. 00-1-05147-8

VERDICT FORM D

JUN 12 2001

We, the jury, find the defendant Guilty (Not Guilty or Guilty) of the crime of Rape of a Child in the First Degree as charged in Count IV.


PRESIDING JUROR

FILED
DEPT. 13
IN OPEN COURT
JUN 12 2001
Pierce County Clerk
By GC DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM E

JUN 12 2001

We, the jury, find the defendant Guilty (Not Guilty or Guilty) of the crime of Child Molestation in the First Degree as charged in Count V.


PRESIDING JUROR

FILED
DEPT. 13
IN OPEN COURT
JUN 12 2001
Pierce County Clerk
By [Signature] / DEPUTY

23

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DYNAMITE SALAVEA,

Defendant.

NO. 00-1-05147-8

VERDICT FORM F

JUN 12 2001

We, the jury, find the defendant Guilty (Not Guilty or Guilty) of the crime of Child Molestation in the First Degree as charged in Count VI.


PRESIDING JUROR

FILED
DEPT. 13
IN OPEN COURT
JUN 12 2001
Pierce County Clerk
By aca / DEPUTY

24