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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

DYNAMITE SALAVEA,

Petitioner.

NO. 42863-6

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Should this petition be dismissed when petitioner has failed to meet his burden of showing any actual prejudice to support his claim that the jury might have found him guilty of six crimes based upon only two distinct acts when the evidence at trial supported each conviction because it showed the victims were subjected to multiple acts of sex abuse over a prolonged period of time?

B. STATUS OF PETITIONER:

Petitioner, DYNAMITE SALAVEA, is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause No.00-1-05147-8, after a jury found him guilty of four counts of rape of a child in the first degree and two counts of child molestation in the first degree. Appendix A. The charges pertained to two victims; petitioner was

1 convicted of two counts of rape and one count of molestation for each victim. Appendix A
2 and D. The judgment and sentence was entered on August 10, 2001. Appendix A.
3 Petitioner appealed his convictions alleging that: 1) the State deprived him of due process
4 and the benefits of juvenile court jurisdiction due to pre-accusatorial delay; and 2) the trial
5 court improperly admitted the victims' statements under the child hearsay statute. *See*
6 Appendix B. The Court of Appeals rejected both claims and affirmed the convictions. *Id.*
7 Petitioner sought review in the Supreme Court; it granted review only on the pre-
8 accusatorial delay issue. Ultimately, the Supreme Court affirmed the decision of the Court
9 of Appeals. *State v. Salavea*, 151 Wn.2d 133, 86 P.3d 125 (2004); Appendix C.

10 Seven years after his direct appeal concluded, petitioner filed a personal restraint
11 petition, claiming that his convictions violated double jeopardy because the jury
12 instructions did not insure that the jury used separate and distinct acts to convict him of
13 each of the two counts of rape for each victim as these were charged using identical
14 language and because the instructions did not explicitly require the jury to base its verdicts
15 on the two counts (per victim) on separate and distinct acts. Petitioner also claims that the
16 instructions on the molestation counts did not require the jury to base its verdict using a
17 different act than it used to find him guilty on the rape charges. He argues that his
18 convictions should be reduced to two counts of rape of a child - one per victim.

19 The State has no information to dispute petitioner claim of indigency, but does
20 dispute that he is entitled to an attorney at public expense to prosecute his collateral attack.
21 Petitioner, in his declaration, seeks payment of his attorney fees. *See Declaration of*
22 *Dynamite Salavea*, attached to petition, at p. 3. Petitioner does not fall within the
23 provisions of RCW 10.73.150, which provides for counsel at public expense in some
24 situations. He does not provide any authority that he is entitled to an attorney at public
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1 expense for his collateral attack. Therefore while petitioner may be indigent, this does not
2 entitle him to an attorney at public expense.

3
4 C. ARGUMENT:

- 5 1. THE PETITION MUST BE DISMISSED BECAUSE PETITIONER
6 HAS FAILED TO MEET HIS BURDEN OF SHOWING ATUAL
7 PREJUDICE.

8 Personal restraint procedure has its origins in the State's habeas corpus remedy,
9 guaranteed by article 4, section 4, of the State Constitution. Fundamental to the nature of
10 habeas corpus relief is the principle that the writ will not serve as a substitute for appeal. A
11 personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute for
12 an appeal. *In re Hagler*, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). Collateral relief
13 undermines the principles of finality of litigation, degrades the prominence of the trial, and
14 sometimes costs society the right to punish admitted offenders. These are significant costs
15 and they require that collateral relief be limited in state as well as federal courts. *Id.*

16 In order to prevail in a personal restraint petition, a petitioner must meet an
17 especially high standard. A petitioner asserting a constitutional violation must show actual
18 and substantial prejudice. *In re Haverty*, 101 Wn.2d 498, 504, 681 P.2d 835 (1984). The
19 rule that constitutional errors must be shown to be harmless beyond a reasonable doubt has
20 no application in the context of personal restraint petitions. *In re Mercer*, 108 Wn.2d 714,
21 718-721, 741 P.2d 559 (1987); *Hagler*, 97 Wn.2d at 825. Mere assertions are insufficient
22 in a collateral action to demonstrate actual prejudice. Inferences, if any, must be drawn in
23 favor of the validity of the judgment and sentence and not against it. *Hagler*, 97 Wn.2d at
24 825-26. A petitioner relying on non-constitutional arguments must demonstrate a
25 fundamental defect, which inherently results in a complete miscarriage of justice. *In re*
Cook, 114 Wn.2d 802, 810-11, 792 P.2d 506 (1990).

Reviewing courts have three options in evaluating personal restraint petitions:

- 1 1. If a petitioner fails to meet the threshold burden of showing actual
2 prejudice arising from constitutional error or a fundamental defect
 resulting in a miscarriage of justice, the petition must be dismissed;
- 3 2. If a petitioner makes at least a prima facie showing of actual
4 prejudice, but the merits of the contentions cannot be determined
5 solely on the record, the court should remand the petition for a full
6 hearing on the merits or for a reference hearing pursuant to RAP
 16.11(a) and RAP 16.12;
- 7 3. If the court is convinced a petitioner has proven actual prejudicial
8 error, the court should grant the personal restraint petition without
 remanding the cause for further hearing.

9 *In re Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

10 Because collateral relief undermines the principles of finality of litigation and
11 degrades the prominence of the trial, the Legislature enacted a one year time limit in which
12 to file a personal restraint petition in 1989. RCW 10.73.090. The statute provides:

13 No petition or motion for collateral attack on a judgment and sentence in a
14 criminal case may be filed more than one year after the judgment becomes
15 final if the judgment and sentence is valid on its face and was rendered by
 a court of competent jurisdiction.

16 RCW 10.73.090(1). The statute of limitations set forth in RCW 10.73.090(1) is a
17 mandatory rule that bars appellate consideration of personal restraint petitions filed after
18 the limitation period has passed, unless the petitioner demonstrates that the petition falls
19 within an exemption to the time limit under RCW 10.73.090 (facial invalidity or lack of
20 jurisdiction), or one of the exceptions listed in RCW 10.73.100:

21 The time limit specified in RCW 10.73.090 does not apply to a petition or
22 motion that is based solely on one or more of the following grounds:

- 23 (1) Newly discovered evidence, if the defendant acted with reasonable
 diligence in discovering the evidence and filing the petition or motion;
- 24 (2) The statute that the defendant was convicted of violating was
25 unconstitutional on its face or as applied to the defendant's conduct;

- 1 (3) The conviction was barred by double jeopardy under Amendment V of
2 the United States Constitution or Article I, section 9 of the state
3 Constitution;
4 (4) The defendant pled not guilty and the evidence introduced at trial was
5 insufficient to support the conviction;
6 (5) The sentence imposed was in excess of the court's jurisdiction; or
7 (6) There has been a significant change in the law, whether substantive or
8 procedural, which is material to the conviction, sentence, or other order
9 entered in a criminal or civil proceeding instituted by the state or local
10 government, and either the legislature has expressly provided that the
11 change in the law is to be applied retroactively, or a court, in interpreting a
12 change in the law that lacks express legislative intent regarding retroactive
13 application, determines that sufficient reasons exist to require retroactive
14 application of the changed legal standard.

9 RCW 10.73.100. A petitioner has the burden to demonstrate that his PRP is timely under
10 the statute. *See In re Personal Restraint of Quinn*, 154 Wn. App. 816, 226 P.3d. 208
11 (2010).

12 Here petitioner's judgment became final on April 5, 2004, the day the mandate
13 issued on his direct review. Appendix C; *see* RCW 10.73.090(3)(b). Petitioner raises a
14 claim that his convictions violate double jeopardy; this claim is falls under the exception
15 found in RCW 10.73.100(3).

16 A petitioner asserting a constitutional violation must show actual and substantial
17 prejudice. *In re Personal Restraint of Davis*, 152 Wn.2d 647, 670, 101 P.3d 1 (2004); *In*
18 *re Personal Restraint of Haverty*, 101 Wn.2d 498, 681 P.2d 835 (1984). The State need
19 not show harmless error. *See Hagler*, at 823.

20 In 2007, Division I of the Court of Appeals issued its decision in *State v.*
21 *Borsheim*, 140 Wn. App. 357, 165 P.3d 417 (2007). Borsheim was convicted of four
22 identical counts of first degree child rape, each of which the State alleged occurred during
23 a specified period. *Borsheim*, 140 Wn. App. 362-63, 165 P.3d 417. Rather than setting
24 the elements for each count out in a separate instruction, the trial court gave a single "to
25 convict" instruction encompassing all four counts. 140 Wn. App. at 368, n.2. While the

1 unanimity instruction properly conveyed the need for jury unanimity regarding the act that
2 formed the basis for any given count, it did not convey the need to base each guilty verdict
3 on a “separate and distinct” event from that used to find guilt on any other count.

4 **Borsheim**, 140 Wn. App. at 367, n.3. The instruction that stated a “separate crime” was
5 charged in each count failed to inform the jury that it must find “separate and distinct” acts
6 for each count. **Borsheim**, 140 Wn. App. at 367, n 4. The Court of Appeals held that these
7 instructions did not explicitly inform the jury that it was required to find “separate and
8 distinct” acts for each identically charged count. 140 Wn. App. at 367. The court held that
9 the jury instructions violated Borsheim’s right to be free from double jeopardy because
10 they did not make manifestly apparent to the jury that each of the four counts had to be
11 based on a different underlying act. 140 Wn. App. at 370, 165 P.3d 417.

12 A few years later, Division I dealt with a similar claim except that it was raised in a
13 collateral attack rather than a direct appeal. **In re PRP of Delgado**, 160 Wn. App. 898, 251
14 P.3d 899 (2011). The court held that this claim did not give rise to a “conclusive
15 presumption of prejudice” on collateral attack as it did on direct review so that Delgado
16 had to show more than just a “theoretical or potential violation of the double jeopardy
17 prohibition.” **Delgado**, 160 Wn. App. at 911. To succeed on his collateral attack, Delgado
18 had to prove by a preponderance of the evidence that was actually and substantially
19 prejudiced by the instructional error. 160 Wn. App. at 911. The court noted that Delgado
20 had not even attempted to establish actual prejudice and so dismissed the petition; the court
21 noted, however, that the victim’s testimony describing that Delgado had had intercourse
22 and oral sex with her on many occasions, in different locations, over the course of two
23 years provided a factual basis supporting the jury’s guilty verdicts on two counts of rape in
24 the first degree based on separate and distinct acts. 160 Wn. App. at 912.

1 In the case now before the court, the instructions given below were substantially
2 the same as those found deficient in *Borshiem*, but unlike that case, the court below did
3 instruct the jury using a separate “to convict” instruction for each of the six counts.
4 Appendix D, Instruction Nos. 11, 12, 13, 14, 15, 16. Additionally, two different crimes
5 were charged in this case- child rape and child molestation. Were petitioner to have raised
6 his challenge on direct appeal, he might have been entitled to some relief. On collateral
7 review, however, he must show that these instructional deficiencies caused him actual
8 prejudice. This he fails to do.

9 In the case now before the court, petitioner was convicted of two counts of rape and
10 one count of molestation per victim, for a total of six counts. He argues that his
11 convictions should be reduced to two counts of rape -a single conviction per victim. To
12 obtain this relief he must show by a preponderance of the evidence that the jury used a
13 single act of sexual intercourse per victim on which to base the three guilty verdicts it
14 returned for crimes alleged against that victim. He argues that the evidence adduced at
15 trial was weak that his convictions were based on separate and distinct acts. In doing so he
16 tries to focus the court’s attention on the lack of evidence as to specific dates on which
17 these acts occurred. While the victims were not very specific as to when, within a general
18 time frame, the sexual abuse occurred, the evidence¹ adduced at trial was clear that
19 multiple acts of abuse occurred in different places over a time frame of several months.

20 Petitioner’s charges pertained to two victims who were brothers: R.U.T. and R.K.T.
21 RP 237-38, 589; Appendix D. The petitioner was their first cousin. RP 239. The victims’
22 mother, Mrs. T., would drop her sons at their paternal grandmother’s house in Tacoma,
23 Washington, four or five time a week when they were young so that they could be watched
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¹ The evidence consisted of the victims’ testimony and their statements to others that were admitted under the child hearsay statute. See Appendix B.

1 while she was at work. RP 240-241. Sometimes her boys would be there overnight. RP
2 242. Several other grandkids lived at the grandmother's house, including petitioner. RP
3 242. In August of 1998, one of the boys' aunts informed Mrs. T. that R.U.T. was being
4 raped by a cousin; at the time Mrs. T. received this information R.U.T. was in California
5 visiting relatives. RP 244. Mrs T. called him in California and said she had found out
6 some news about his cousins touching him and wanted to know if they had, but R.U.T.
7 wanted to talk to his brother before he said anything. RP 245. Mrs. T. kept asking him for
8 the truth as to what had happened and - after an initial denial - R.U.T. told her that "they
9 were doing it to both me and my brother." RP 245-46. Mrs. T. did not have any more
10 conversation with R.U.T. until he returned to Washington. RP 246. R.U.T. then disclosed
11 to his mother that petitioner would put his penis in R.U.T.'s anus and mouth. RP 248.
12 When she spoke to R.K.T., he described an incident where petitioner "peed" into his butt
13 and that his pee was gray. RP 249. R.K.T. told her that petitioner had threatened to kill
14 him if he told anyone. RP 249. Mrs. T. testified that R.K.T. had shown recent reluctance
15 to go to his grandmother's house. RP 249-50. She also testified that one time R.U.T. had
16 complained that his "butt was bleeding" after using the bathroom but that she just assumed
17 it was due to constipation or something. RP 250.

18 R.U.T. testified that petitioner was his cousin and that he would be with petitioner
19 at his paternal grandmother's house in Tacoma starting when he was five or six years old.
20 RP 366-70. R.U.T. testified that sometimes he would spend the night at his grandmother's
21 and that most of the time he would sleep in the basement in a big bed that sometimes held
22 as many as four or five cousins. RP 371. Sometimes the petitioner would be sleeping in
23 the basement bed with R.U.T. and his brother. RP 373. R.U.T. testified that petitioner
24 "would stick his front private in my back private, like force it in there" and that it happened
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1 more than once. RP 375-76. R.U.T. described that he would try to keep his cousin from
2 doing this and that it did not feel good; he testified that sometimes he would yell when this
3 happened but that it was hard to yell because he would be lying on his stomach and his
4 face would be in a pillow. RP 376-77. R.U.T. described that “most of the time” he would
5 be wearing stretchy pants or shorts that could be easily pulled down by the petitioner and
6 that “sometimes’ the petitioner would hit him because he wouldn’t want to do what the
7 petitioner told him to do. RP 377-78. When asked how long petitioner would keep his
8 front private in R.U.T.’s back private, R.U.T. testified that he “[couldn’t] say how long
9 because its like different time limits” but that petitioner would “vibrate it up and down.”
10 RP 378. When asked who would be present when this happened to him, R.U.T. responded
11 “Most of the time his [meaning petitioner’s] brothers. Sometimes my brother.” RP 379.
12 In addition to describing what would happen in the basement, R.U.T. testified that it would
13 also happen upstairs in his auntie’s bedroom – and once in the living room - when he
14 would not go to church with his grandmother and the petitioner would find him watching
15 television. RP 379-80, 383. R.U.T testified that these upstairs rapes occurred in the
16 daytime; he again testified that petitioner would stick his front private into “my back
17 private” and that petitioner made him “suck his front private.” RP 380. R.U.T. described
18 that petitioner would hold his head then force his private into his R.U.T.’s mouth. RP 381.
19 When asked whether he was ever asked to suck petitioner’s private when he was in the
20 basement , R.U.T. responded “ sometimes in the basement he wouldn’t and sometimes he
21 would.” RP 381. R.U.T. testified that sometimes he would be outside and petitioner
22 would push him into his grandmother’s shed; he described being anally raped inside the
23 shed. RP 382-83. R.U.T. testified to being made to lick petitioner’s front private and that
24 “gray stuff” would come out of petitioner’s private and go onto the floor of the shed. RP
25 382-83. He testified that rapes occurred two or three times in the shed. RP 383. R.U.T.

1 testified that while the assaults sometimes happened during the day, most of the time it
2 happened at night when they were sleeping in the basement. RP 384-85. R.U.T. testified
3 that he was forced to suck petitioner's private more than twice but that he couldn't give
4 and exact number how many times it happened. He testified that all of this happened when
5 he was between the ages of five and eight and that it did not happen anymore after he came
6 back from a trip to California; R.U.T.'s birthday is February 24, 1991. RP 366, 383, 393.
7 The time frame set forth in the instructions for crimes pertaining to R.U.T. was from
8 February, 1996 through June, 1998. Appendix D, Instruction Nos. 13, 14, 15.

9 R.K.T. testified that he used to visit his paternal grandmother's house in Tacoma
10 almost every week. RP 406. He testified that he used to sleep in the basement of his
11 grandmother's house along with his brother, the petitioner, and the petitioner's brother.
12 RP 407. R.K.T. testified that petitioner would put his hand down R.K.T.'s pants when
13 they were sleeping and rub his private parts. RP 408-09. R.K.T. testified that he would
14 start crying and tell him to stop, but petitioner would not. RP 409. R.K.T. also described
15 that he would bend down and petitioner would put his privates on R.K.T.'s behind and rub
16 it up and down. RP 409-10. He testified that this happened many times and that "he was
17 behind me every time I went over there." RP 411, 415. R.K.T. testified that something
18 would come out of petitioner's private part that he couldn't see because it was dark but that
19 "it felt harder than water and hot." RP 411. When asked whether petitioner's private part
20 ever went in his anus, R.K.T. stated "I can't remember." RP 420. R.K.T. testified that he
21 could only remember some of what happened to him, but that he thinks about it all the time
22 because it scares him and because of the "pain [he] went through." RP 416-17. He
23 testified that when he talked to other people about what happened he was truthful but could
24 not remember everything he has said to others. RP 415-418.

1 Leah Hill, a close friend to the victims' mother, testified that she spent considerable
2 time with the boys and that one night, when R.K.T. was eight, he disclosed to her that
3 petitioner had "put his thing in my butt" when R.K.T. was staying downstairs at his
4 grandmothers house. RP 357-58. R.K.T. told her he didn't tell anyone because
5 "everybody will think I'm gay." RP 359. R.K.T. told her that petitioner had threatened to
6 hit him if he ever told and that he was frightened that the petitioner would show up outside
7 of his window. RP 360. Ms. Hill testified that this conversation with R.K.T. happened in
8 August when R.U.T. was in California. RP 355, 362. On the return trip from California,
9 R.U.T. told Jennifer Chavez, a longtime family friend, that petitioner had touched him on
10 his butt with his [petitioner's] "pee-pee." RP 445-46. When he spoke to Ms. Chavez,
11 R.U.T. was very scared and was worried that petitioner would kill him or hurt his family.
12 RP 446.

13 Cheryl Hanna-Truscott, a nurse practitioner with the Mary Bridge Children's
14 Sexual Assault Clinic, testified that she performed an evaluation on both R.U.T. and
15 R.K.T. on September 15, 1998, when they were seven and a half and eight and a half years
16 old, respectively. RP 302-14, 318. During the taking of medical history, R.U.T. told her
17 that he knew he was there because his cousins, including petitioner, had forced him to do
18 "nasty stuff." RP 318-20. R.U.T. could not remember the first time it happened because it
19 was "a long time ago," but stated that it happened a "bunch of times." RP 320. He
20 described that it started when he was five or six and that his cousins would stick their
21 privates up his butt when he was at his grandma's house and that they would make him
22 lick their privates. RP 320-21. He said that petitioner and petitioner's brother put their
23 privates in his mouth but that a third cousin who was there did not do this. RP 329-30. He
24 also stated that his cousins would touch his privates and put their privates on his and that
25 this would wake him up from sleeping. RP 330. He told her that while his other two

1 cousins only stuck their privates in his butt halfway that petitioner put it in all the way and
2 made him bleed. RP 330. R.U.T. demonstrated with his hand² how his cousins would
3 touch his private and their own privates and that “gray stuff” would come out of
4 petitioner’s private. RP 331. Ms. Hanna-Truscott then interviewed R.K.T. who
5 understood that he was there because petitioner and his brother “keep on doing bad stuff to
6 me.” RP 335. R.K.T. described to her how petitioner would put his hand in R.K.T.’s pants
7 and touch his privates when they were sleeping in the same bed. RP 336. He described
8 that petitioner would hold and squeeze his private. RP 336. R.K.T. stated that he tried to
9 get away but that petitioner would keep hitting him and telling him to “hold still.” RP 337.
10 R.K.T. went on to say that petitioner would then pull R.K.T.’s pants down and put his
11 mouth on R.K.T.’s private telling him that he will try to bite it. RP 337. R.K.T. also said
12 that he was forced to put his mouth on petitioner’s private. RP 337.

13 R.U.T. also gave considerable detail to a child interviewer as to how petitioner
14 would rub his private parts, stick his private part into the R.U.T.’s butt, lick his private part
15 and force R.U.T. to lick petitioner’s private part. RP 474-90. He indicated that the
16 happened “a ton of times.” RP 474. R.K.T. told the child interviewer that petitioner stuck
17 his private into R.K.T.’s back private and that this hurt. RP 492- 94. He described it
18 happening at his grandmother’s house, in the basement. RP 494. He also described
19 petitioner having oral contact with his penis and that petitioner would masturbate him with
20 his hand. RP 495. He also stated that he had to put his mouth on petitioner’s private and
21 put his private into petitioner’s bottom. RP 496- 97. He said this happened a “couple of
22 times” and that he was about to go into the first grade when it started. RP 497-498. The
23 last time something happened with the petitioner he was in the second grade. RP 498-99.

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² Ms Hanna-Truscott demonstrated this movement to the jury. RP 331.

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Thus, the evidence before the jury was of repeated sexual abuse of various types on both victims occurring frequently over an extended period of time. R.U.T. testified directly to repeated acts of anal and oral intercourse when he was between the ages of five and eight, occurring in at least four different locations at his grandmother's house: 1) the basement; 2) the upstairs living room; 3) his aunt's bedroom; and, 4) the shed. R.U.T. also reported to Ms Hanna-Truscott and a child interviewer that petitioner would have sexual contact with him by using his hand and genitals to rub against R.U.T.'s genitals. R.K.T. disclosed to Ms Hanna-Truscot at least two clear acts of oral/genital intercourse – once where petitioner had his mouth on R.K.T.'s penis and once where petitioner's penis was in R.K.T.'s mouth. R.K.T. disclosed to Leah Hill that petitioner anally raped him and he disclosed to the child interviewer that he was forced to put his penis in the petitioner's anus. R.K.T. disclosed to others and then testified regarding acts of sexual contact where petitioner would be rubbing and squeezing his penis. Thus, the evidence before the jury described several distinct acts of sexual intercourse and sexual contact against both victims, in addition to testimony that these types of acts happened many times. The prosecutor, during closing argument, referenced that there were multiple counts of rape and that the victims indicated that the acts occurred on multiple times. RP 606, 638.

Petitioner has not met his burden of showing that it is more likely than not that the jury - having heard evidence of numerous acts of sexual intercourse and sexual contact between petitioner and the two victims - choose to return verdicts on three separate counts (per victim) using a single underlying act on which to base its verdicts. This is highly unlikely particularly because the three guilty verdicts included two different crimes - rape and molestation. The jury was given definitional instructions which separately defined "sexual intercourse" and "sexual contact." Appendix D, Instruction Nos. 8 and 10. The

1 instructions would lead the jury to believe that the counts alleging child molestation would
2 be supported by different type of underlying act than the acts that might be used to find
3 guilt on the rape charges. Given that the jury was instructed on the difference between
4 sexual conduct and sexual intercourse, it is far more likely that the jury based its verdict of
5 guilt on the molestation charges on an act that matched the definition of sexual contact
6 rather than one that met the definition of sexual intercourse. Nor has petitioner presented
7 any reason why the jury would be likely to choose the same act of sexual intercourse to
8 return two rape verdicts when it had other distinct acts of sexual intercourse on which it
9 could rely.

10 Petitioner is unable to show any likelihood that the jury's verdicts per victim were
11 based on the same underlying act. To demonstrate actual prejudice, the petitioner would
12 have to show that, instructed properly, the jury would have reached a different decision;
13 i.e. that the State proved only one act of sexual intercourse beyond a reasonable doubt on
14 each of the petitioner's victims. He cannot show that the verdicts would have been
15 different had there been an instruction stating that the jury must base each conviction on a
16 separate and distinct act from those used to convict on other counts. Petitioner's argument
17 is unreasonable given the evidence in this case. The evidence presented at trial in this case
18 overwhelmingly shows that petitioner committed multiple offenses against each victim.
19 Given the overwhelming evidence in this case, the petitioner cannot show that the lack of a
20 ***Borshiem*** instruction caused any prejudice to his case. The petition should be dismissed.

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D. CONCLUSION

Petitioner fails to demonstrate any actual prejudice. The State respectfully requests that the petition be dismissed.

DATED: June 27, 2012.

MARK LINDQUIST
Pierce County
Prosecuting Attorney


KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the petitioner true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

Date Signature

APPENDIX “A”

Judgment and Sentence

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: August 10, 2001

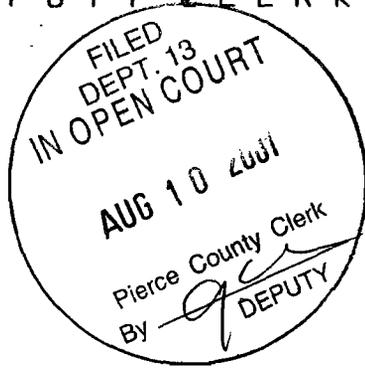
By direction of the Honorable
Stephyn Nelson
J U D G E

TED RUTT
C L E R K

By: *Karen Ladensung*
D E P U T Y C L E R K

CERTIFIED COPY DELIVERED TO SHERIFF

Date ~~Aug 14 2001~~ By *Karen Ladensung* Deputy



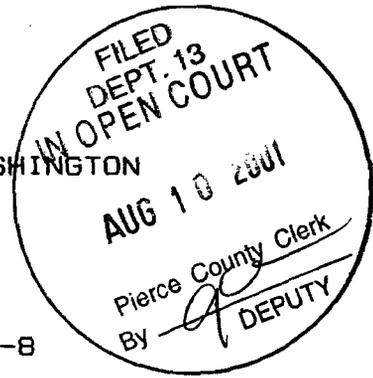
STATE OF WASHINGTON)
County of Pierce) ss:

I, Ted Rutt, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court.
DATED: _____

TED RUTT, Clerk
By: _____ Deputy

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

vs.

JUDGMENT AND SENTENCE (JS)

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

AUG 14 2001

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

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

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

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

21
22 Count No.: VI
23 Crime: CHILD MOLESTATION IN THE FIRST DEGREE, Charge Code:
24 (I39A)
25 RCW: 9A.44.083
26 Date of Crime: 02/96-06/98
27 Incident No.: TACOMA POLICE DEPT. 982390752

28 as charged in the Original Information.

- 17 [] A special verdict/finding for use of a **firearm** was returned on
18 Count(s) _____. RCW 9.94A.125, .310.
19 [] A special verdict/finding for use of **deadly weapon other than a**
20 **firearm** was returned on Count(s) _____. RCW 9.94A.125, .310.
21 [] A special verdict/finding of **sexual motivation** was returned on
22 Count(s) _____. RCW 9.94A.127.
23 [] A special verdict/finding for **violation of the Uniform Controlled**
24 **Substances Act** was returned on Count(s) _____, RCW 69.50.401 and RCW
25 69.50.435, taking place in a school, school bus, or within 1000
26 feet of the perimeter of a school grounds or within 1000 feet of a
27 school bus route stop designated by the school district; or in a
28 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
authority, or in a public housing project designated by a local
government authority as a drug-free zone.
[] A special verdict/finding that the defendant committed a crime
involving the manufacture of methamphetamine **when a juvenile was**
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.

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- 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:

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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) _____.

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IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma, WA 98402):

\$ ~~66.05~~ Restitution to: ~~Providence Health Plans~~

\$ ~~1098.42~~ Restitution to: ~~CVC - Re. VR 37107 & 37108~~

\$ _____ Restitution to: _____
(Name and Address-address may be withheld and provided confidentially to Clerk's Office).

\$ 500.00 Victim assessment RCW 7.68.035

\$ 110.00 Court costs, including RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190

Criminal filing fee \$ _____
Witness costs \$ _____
Sheriff service fees \$ _____
Jury demand fee \$ _____
Other \$ _____

\$ _____ Fees for court appointed attorney RCW 9.94A.030

\$ _____ Court appointed defense expert and other defense costs RCW 9.94A.030

\$ _____ Fine RCW 9A.20.021 [] VUCSA additional fine waived due to indigency RCW 69.50.430

\$ _____ Drug enforcement fund of _____ RCW 9.94A.030

\$ _____ Crime Lab fee [] deferred due to indigency RCW 43.43.690

\$ _____ Extradition costs RCW 9.94A.120

\$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430

\$ _____ Other costs for: _____

\$ ~~157.14~~ 610.00 **TOTAL** RCW 9.94A.145

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[] 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.

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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) _____

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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)
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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)
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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 KATHRYN J NELSON
27 JUDGE Print Name:

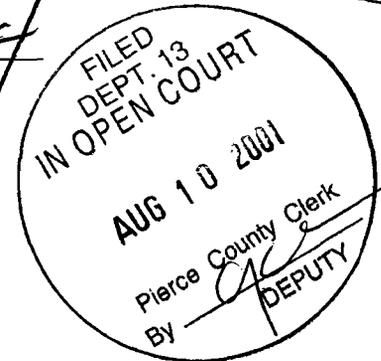
28 Dee Clark
29 Deputy Prosecuting Attorney

30 Print Name:
31 WSB# 22262

32 [Signature]
33 Attorney for Defendant

34 Print name:
35 WSB# 21424

36 Declina
37 Defendant
38 Print name: Dyanite Salavea



39 JUDGMENT AND SENTENCE (JS)
40 (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.

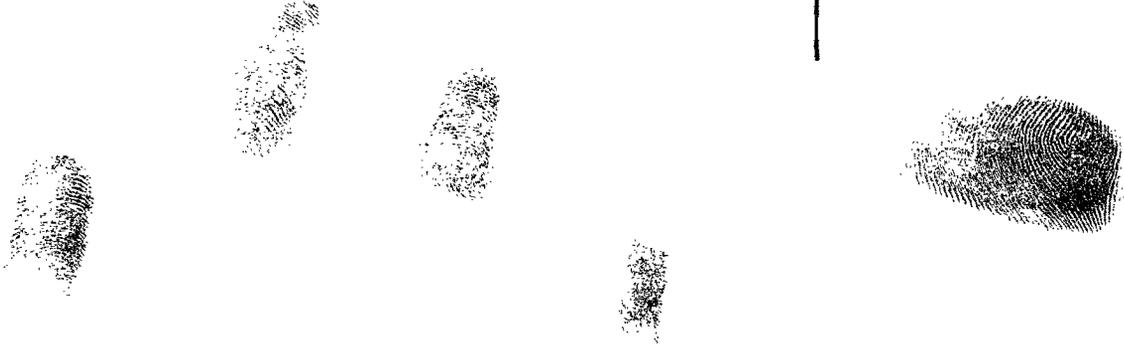
The Court may also order any of the following special conditions:

- (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



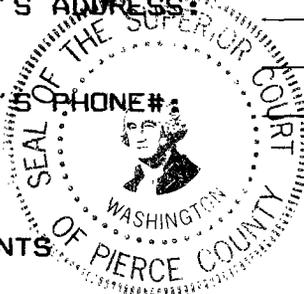
I attest that I saw the same defendant who appeared in Court on this Document affix his or her fingerprints and signature thereto. Clerk of the Court, TED RUTT: _____, Deputy Clerk.

Dated: 8/10/01

DEFENDANT'S SIGNATURE: *Kevin Stock*

DEFENDANT'S ADDRESS: *or complete*

DEFENDANT'S PHONE#: _____



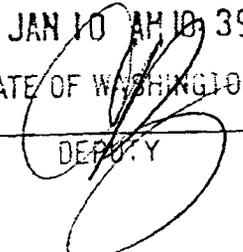
FINGERPRINTS

STATE OF WASHINGTON, County of Pierce
ss: I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
day of JUN 28 2001, 20
By *Kevin Stock* Deputy

APPENDIX “B”

Published Opinion

FILED
COURT OF APPEALS
DIVISION II

03 JAN 10 AM 10:39
STATE OF WASHINGTON
BY 
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

v.

DYNAMITE SALAVEA aka PALE TUUPO,

Appellant.

No. 27744-1-II

PUBLISHED OPINION

BRIDGEWATER, J. — Dynamite Salavea appeals his adult convictions for first degree child rape and first degree child molestation. He complains that the State deprived him of due process and the benefits of juvenile court jurisdiction by not charging him until he reached 18. Although Salavea was 15 when he committed his crimes, the investigation did not conclude before he turned 16; thus, the automatic decline statute, RCW 13.04.030, was in effect. The earliest that the State could have charged Salavea was after he turned 16; and he committed his crimes after July 1, 1997. Thus, he could not avoid being tried as an adult. He was not denied due process. We affirm.

In August 1998, B.T. learned from a relative that Salavea, her nephew, had sodomized her sons, R.K.T. and R.U.T. B.T. telephoned R.U.T., who was visiting California; R.U.T. denied

that Salavea had touched him and asked to speak with his brother. B.T. repeated her question several times before R.U.T. admitted that Salavea had victimized both him and R.K.T.

B.T. next contacted Jennifer Chavez, a close friend, told her that R.U.T. had been molested, and asked her to drive R.U.T. home from California. On the drive to Washington, Chavez and R.U.T. spoke several times about the incidents. B.T. also told Leah Hill, a woman who lived with her, that "her boys had been raped." 4 Report of Proceedings (RP) at 355. Hill asked R.K.T. several times if something was wrong before he mentioned incidents regarding Salavea. In October 1998, a child interviewer questioned R.U.T. and R.K.T.; both boys reported that Salavea had sexually abused them.

In October 2000, shortly after Salavea turned 18, the State charged him with four counts of first degree child rape and two counts of first degree child molestation. The State alleged that Salavea committed the offenses against R.K.T. and R.U.T., his cousins, between February 1996 and June 1998, when Salavea was between the ages of 13 and 15.

The relevant dates and events are as follows:

- 7/1/97 Salavea allegedly commits child rape after this date.
- 9/29/98 Pierce County Prosecutor's Office receives the investigative file.
- 10/9/98 Salavea turns 16.
- 10/30/98 An investigator interviews the two alleged victims.
- 11/2/98 An investigator interviews the victims' sister.
- 3/8/99 The State reviews Salavea's file for charging.
- 3/9/99 The State charges Salavea's then 14-year-old brother for the same conduct against the same victims.
- 4/99 Salavea leaves for Utah after violating his probation.
- 7/00 to 8/00 Salavea returns to Washington.
- 9/14/00 The State arrests Salavea for robbery in Tacoma, he provides false information.
- 10/9/00 Salavea turns 18.

- 10/25/00 The State charges Salavea as an adult.

Salavea moved to dismiss the charges, arguing that preaccusatorial delay violated his due process rights. The trial court denied the motion, finding that the delay was not unreasonable and did not unfairly prejudice Salavea.

The trial court also conducted a child hearsay hearing under RCW 9A.44.120, finding that the victims' hearsay statements were admissible. A jury found Salavea guilty as charged.

I. Preaccusatorial Delay

Salavea argues that preaccusatorial delay denied him due process and the benefits of juvenile court jurisdiction. An intentional delay to avoid the juvenile justice system violates due process; a negligent delay may violate due process.¹ Washington courts use a three-prong test to determine whether preaccusatorial delay violates due process: (1) the defendant must show prejudice from the delay; (2) the court must consider the reasons for the delay; and (3) if the State can justify the delay, the court balances the State's interest against the prejudice to the defendant.²

Salavea does not argue that the State should have charged him before he turned 16; rather, he contends the State should have charged him when it charged his brother, March 1999. Consequently, Salavea impliedly concedes that the investigative delay (between September 29, 1998, when the State received the file, and November 2, 1998, when the child interviews

¹ *State v. Alvin*, 109 Wn.2d 602, 604, 746 P.2d 807 (1987).

² *State v. Dixon*, 114 Wn.2d 857, 860, 792 P.2d 137 (1990).

concluded) was neither improper nor unreasonable.³ Thus, in analyzing the second prong, we hold that the record does not disclose any irregularity; therefore, the investigative delay was justified.

We hold that the delay did not unfairly prejudice Salavea because he turned 16 before the investigation concluded and the State charged him with first degree child rape. Therefore, the automatic decline statute, RCW 13.04.030, applied and Salavea would have been tried as an adult even if the State had charged him in March 1999. We do not need to analyze the other prongs as Salavea suffered no prejudice.

Salavea argues that he must have committed the offense when he was 16 or 17 for the automatic decline statute to apply; but the statute does not support this argument. The automatic decline statute confers exclusive original jurisdiction on the adult division of superior court where:

(v) The juvenile is sixteen or seventeen years old and the alleged offense is:

....
(C) . . . [R]ape of a child in the first degree . . . committed on or after July 1, 1997[.]^[4]

The Supreme Court has held this statute to be unambiguous regarding RCW 13.04.030(1)(e)(iv). *In re Boot*, 130 Wn.2d 553, 565, 925 P.2d 964 (1996). We also hold RCW 13.04.030(1)(e)(v) to be unambiguous.

³ See, e.g., *State v. Lidge*, 111 Wn.2d 845, 850, 765 P.2d 1292 (1989) (“[C]ourts generally conclude that investigative delays are justified.”).

⁴ RCW 13.04.030(1)(e)(v)(C).

Boot also held that “jurisdiction over offenses committed by a juvenile is to be determined at the time proceedings are instituted against the offender.”⁵ For Salavea’s argument to have merit the statute would have to be ambiguous and RCW 13.04.030(1)(e)(v) would have to specify that the offense must be committed when the juvenile was 16 or 17. But such is not the case.⁶ Consequently, whether the State charged Salavea in late 1998, when the investigation concluded, or in March 1999, when the State charged Salavea’s brother, the automatic decline statute would have applied, and Salavea would have been tried as an adult. Thus, the delay in charging Salavea did not deny him due process.

II. Child Hearsay

Salavea also challenges the admission of the victims’ statements to B.T., Jennifer Chavez, Leah Hill, and the child interviewer. Such statements are admissible when the child is under 10 years of age, is otherwise available to testify, and the court finds that the “time, content, and circumstances of the statement provide sufficient indicia of reliability[.]”⁷

In determining the reliability of hearsay, courts weigh nine nonexclusive factors: (1) whether the declarant had an apparent motive to lie; (2) the declarant’s general character; (3) whether more than one person heard the statements; (4) the spontaneity of the statements; (5) the timing of the declaration and the relationship between the declarant and the witness; (6) whether the statements contain express assertions of past fact; (7) whether the declarant’s lack of

⁵ *Boot*, 130 Wn.2d at 575 (quoting *State v. Calderon*, 102 Wn.2d 348, 351-52, 684 P.2d 1293 (1984)).

⁶ See *In re Marriage of Killman*, 264 Kan. 33, 955 P.2d 1228, 1234 (1998) (Courts “will not read [a plain] statute so as to add something not readily found in the statute.”).

⁷ RCW 9A.44.120.

knowledge could be established by cross-examination; (8) the possibility of the declarant's recollection being faulty; and (9) whether the circumstances suggest that the declarant misrepresented the defendant's involvement.⁸ The admissibility of child hearsay lies within the trial court's sound discretion, which this court will not reverse absent manifest abuse of discretion.⁹

Salavea challenges the spontaneity and timing of the statements, claiming that the statements were the product of suggestion, coaching, and reinforcement. But a review of the record shows that the trial court applied the correct analysis and did not err.

First, not every factor must be satisfied before a statement is admitted.¹⁰ And by challenging only two factors, Salavea concedes that the other seven factors were satisfied. Second, the victims' statements to the interviewer satisfy the spontaneity factor; the interviewer used the victims' words and asked open-ended questions. Thus, even if the victims' statements to the other hearsay witnesses were neither spontaneous nor timely, they were merely cumulative of the interviewer's and the victims' testimony. Third, it is of little relevance that the victims did not make their statements until several months after Salavea's crimes. The victims claimed that Salavea threatened to harm them if they said anything. Finally, the relationships between the victims and the witnesses were strong, favoring admissibility. The trial court did not abuse its discretion in admitting the hearsay statements.

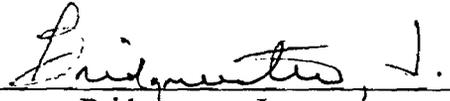
⁸ *State v. Ryan*, 103 Wn.2d 165, 175-76, 691 P.2d 197 (1984).

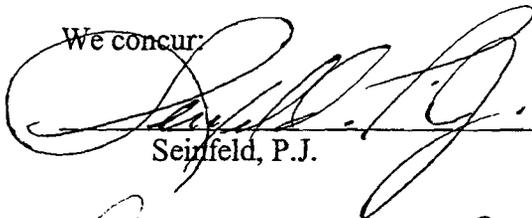
⁹ *State v. Pham*, 75 Wn. App. 626, 631, 879 P.2d 321 (1994), *review denied*, 126 Wn.2d 1002 (1995).

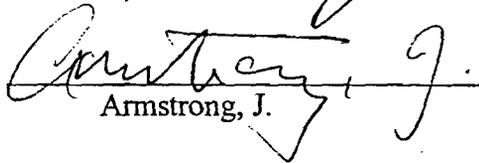
¹⁰ *See State v. Justiniano*, 48 Wn. App. 572, 580, 740 P.2d 872 (1987) (child hearsay admitted even though disclosed only to child's mother).

27744-1-II

Affirmed.

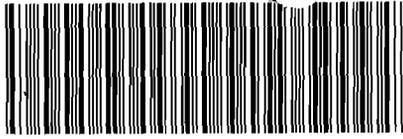

Bridgewater, J.

We concur:

Seinfeld, P.J.


Armstrong, J.

APPENDIX “C”

Mandate and En Banc



00-1-05147-8 20792495 MND 04-07-04

CERTIFIED COPY

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STATE OF WASHINGTON

2004 APR -5 1:33

BY C.J. MEDWITT

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IN COUNTY CLERK'S OFFICE

A.M. APR - 6 2004 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DYNAMITE SALAVEA a/k/a PALE TUUPO,

Petitioner.

MANDATE

NO. 73642-1

Pierce County No.
00-1-05147-8

C/A No. 27744-4-II

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington
in and for Pierce County.

The opinion of the Supreme Court of the State of Washington filed on March 11, 2004, became final in the above entitled cause on March 31, 2004. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows: Costs in the amount of \$4539.10 are awarded in favor of the Respondent and against Appellant, Salavea, with \$14.14 to be paid to the Pierce County Prosecutor's Office and \$4524.96 to be paid to the Appellate Indigent Defense Fund.

18/106

MANDATE

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I have affixed the seal of the Supreme Court of the State of Washington and filed this Mandate this 5th day of April, 2004.


C. J. MERRITT
Clerk of the Supreme Court, State of
Washington

cc: Ms. Mary Katherine Young High
Mr. John Martin Neeb
Ms. Kathleen Proctor
Ms. Sheryl Gordon McCloud
Ms. Simmie Ann Baer
Mr. George Yeannakis
Court of Appeals Div II
Reporter of Decisions

FILE
IN CLERKS OFFICE
SUPREME COURT, STATE OF WASHINGTON
DATE MAR 11 2004
Alexander C.J.
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 73642-1
Respondent,)	
)	En Banc
v.)	
)	
DYNAMITE SALAVEA a/k/a PALE)	
TUUPO,)	
)	Filed <u>MAR 11 2004</u>
Petitioner.)	
_____)	

OWENS, J. -- Dynamite Salavea argues that intentional or negligent prosecutorial delay by the State caused him to lose juvenile court jurisdiction, prejudicing his defense on four counts of rape of a child in the first degree and two counts of child molestation in the first degree. Salavea further contends that under the automatic decline statute, RCW 13.04.030, he would not have been automatically declined at the earliest time of proceedings because the age element in the statute refers to age at the time the crime is committed, not the age at the time of the proceedings. In light of previous case law, the plain language of the statute, and the legislative intent, we disagree and hold that age at the time of the proceedings is the

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controlling age. Based on the nature of the charges and Salavea's age at the earliest possible time of charging, Salavea would have been automatically declined. Therefore, Salavea fails to prove prejudice and his due process rights were not violated by any prosecutorial delay. We affirm the Court of Appeals.

FACTS

Salavea was born on October 9, 1982. Between February 1996 and June 1998, when Salavea was 13-15 years of age, Salavea raped and molested his cousins, R.U.T. and R.K.T. No issue is raised that relates to the facts of the abuse elicited at trial, so the details of the abuse need not be related. In August 1998, an aunt told the boys' mother, Bonnie, that her son had been raped. Bonnie spoke with the boys and then reported the abuse to the police. The juvenile court's prosecutor's office received the investigative file on September 29, 1998. Salavea turned 16 on October 9, 1998. During October and November the prosecutor's office conducted interviews with the children and tried to contact Salavea, but could not find him. Verbatim Report of Proceedings (VRP) (motion to dismiss, May 11, 2001) at 9-12; 4 VRP (trial, June 6, 2001) at 265-70; Clerk's Papers (CP) at 38 (Detective C. Pollard's written report dated Dec. 1, 1998).

On March 8, 1999, the prosecutor's office reviewed the file for charging and transferred the file to the Pierce County Superior Court division pursuant to the automatic decline statute. RCW 13.04.030; CP at 32. Around this same time, Salavea

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committed a parole violation, a bench warrant was issued based on the violation, and Salavea fled Washington for Utah. At the time Salavea fled, he lost contact with his mother and his family, he knew the bench warrant had been issued, and he knew about the allegations regarding R.U.T. and R.K.T. Salavea returned to Washington in July or August 2000, was picked up for robbery in Tacoma on September 14, 2000, and provided the police with false information. On October 9, 2000, Salavea turned 18.

Salavea was charged and arraigned as an adult on four counts of rape of a child in the first degree and two counts of child molestation in the first degree on October 25, 2000. VRP (arraignment, Oct. 25, 2000) at 3; CP at 3-5; *State v. Salavea*, 115 Wn. App. 52, 55, 60 P.3d 1230 (2003). In April 2001 Salavea filed a motion to dismiss based on prosecutorial delay. CP at 24. Judge Frederick B. Hayes applied the prosecutorial delay three-prong test and found Salavea had been prejudiced, but denied the motion because the State's reasons for delay were reasonable: the State was thorough in its investigation, Salavea was absent from the jurisdiction, the State knew Salavea had a bench warrant out and delayed charging. VRP (motion to dismiss, May 11, 2001) at 17-19. Salavea was subsequently found guilty by a jury and sentenced. Salavea appealed the decision based on prosecutorial delay and argued that he should have been charged following the police investigation. Br. of Appellant at 15. The Court of Appeals applied the same three-prong test to the facts

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and concluded that Salavea did not show prejudice from the delay because at the conclusion of the investigation he was 16. Based on Salavea's age and the nature of the crimes committed, RCW 13.04.030(1)(e)(v)(C) prevented juvenile court jurisdiction. The Court of Appeals affirmed the trial court decision because Salavea failed to show prejudice based on loss of juvenile court jurisdiction. *Salavea*, 115 Wn. App. at 55-57. We now affirm the Court of Appeals.

ISSUES

1. Does the age prerequisite in RCW 13.04.030(1)(e)(v) refer to the defendant's age at the time of the proceedings or the defendant's age during the commission of the crime?
2. If RCW 13.04.030(1)(e)(v) does apply to Salavea, did the State violate Salavea's due process rights by intentionally or negligently delaying a charging decision?

ANALYSIS

Due process plays a limited role in protecting defendants against oppressive delay. *United States v. Lovasco*, 431 U.S. 783, 789, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977).¹ Absent intentional or negligent prosecutorial delay, where a defendant

¹ Salavea does not argue that Washington's due process protections should be greater than the federal protection provided. Therefore, we need not discuss a separate due process analysis under the state constitution.

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commits a crime before he is 18 but is not charged until after he is 18, there is not a violation of due process. *State v. Dixon*, 114 Wn.2d 857, 858-59, 792 P.2d 137 (1990) (holding that where a defendant committed the crime at age 16 but was not charged until he was 18, due process was not violated because prosecutorial delay was justified); *State v. Calderon*, 102 Wn.2d 348, 349, 684 P.2d 1293 (1984). Whether Salavea's due process rights were violated based on prosecutorial delay is a question we review de novo. See *State v. Warner*, 125 Wn.2d 876, 883, 889 P.2d 479 (1995) (reviewing prosecutorial delay de novo under the error of law standard and finding that circumvention of precedents applying the prosecutorial delay test constituted reversible error).

To decide if there is prosecutorial delay, a court must apply a three-prong test. First, the defendant must show the charging delay caused prejudice. If the defendant shows prejudice, the court then examines the State's reasons for the delay. Finally, the court balances the delay against the defendant's prejudice to decide if the delay violates the "fundamental conceptions of justice." If the delay is intentional, due process is violated, but if the delay only is negligent, due process may or may not be violated. *Lovasco*, 431 U.S. at 790; *Calderon*, 102 Wn.2d at 352-53; *Dixon*, 114 Wn.2d at 860, 865-66.

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A. Prong One: Prejudice

1. Actual Prejudice

Salavea must show the State's delay caused actual prejudice to his defense in order to satisfy prong one of the prosecutorial delay test. *State v. Norby*, 122 Wn.2d 258, 264, 858 P.2d 210 (1993) (emphasizing that prejudice must be actual, not merely speculative). Salavea argues that his loss of juvenile court jurisdiction fulfills this burden. We have held that offenders fulfill their burden of proof when prosecutorial delay causes a loss of juvenile court jurisdiction because the loss results in a decrease of benefits available to a defendant.² *Dixon*, 114 Wn.2d at 860-61 (stating that two benefits lost to the defendant are the avoidance of the stigma attached to an adult conviction and the possibility for less harsh penalties); *Calderon*, 102 Wn.2d at 352-53 (stating that loss of juvenile court jurisdiction results in the loss of juvenile adjudication or the opportunity to argue against a decline from juvenile court jurisdiction); *State v. Alvin*, 109 Wn.2d 602, 604, 746 P.2d 807 (1987).

However, the right to be tried in a juvenile court is not constitutional and the right attaches only if a court is given statutory discretion to assign juvenile or adult

² It should be noted that when we refer to juvenile court jurisdiction we do not mean the juvenile court is a separate constitutional court. Rather, as we have previously held in *State v. Werner*, 129 Wn.2d 485, 918 P.2d 916 (1996), we recognize the juvenile court is only a division of the superior court given statutory authority to adjudicate "a phase of the business of the superior court." *Id.* at 492-93 (quoting *Dillenburg v. Maxwell*, 70 Wn.2d 331, 352, 413 P.2d 940, 422 P.2d 783 (1967)).

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court jurisdiction. *In re Boot*, 130 Wn.2d 553, 570-71, 925 P.2d 964 (1996); *Dixon*, 114 Wn.2d at 860; *State v. Sharon*, 33 Wn. App. 491, 494-95, 655 P.2d 1193 (1982), *aff'd*, 100 Wn.2d 230, 668 P.2d 584 (1983). Absent statutory discretion to assign jurisdiction, a defendant cannot suffer prejudice because his case was not adjudicated in juvenile court. Whether Salavea can prove loss of juvenile court jurisdiction, then, depends on whether the juvenile court had statutory discretion to assign juvenile court jurisdiction.

We must look to the appropriate statutory interpretation and application of the automatic decline statute, RCW 13.04.030, to determine this issue. The earliest the State could charge and try Salavea was after he turned 16. If the automatic decline statute refers to age at the time of the proceedings, then the court did not have discretion to assign juvenile court jurisdiction at the time of the charging and trial and Salavea cannot fulfill his proof of prejudice.

2. Statutory Interpretation of RCW 13.04.030(1)(e)(v)

Statutory interpretation is a question of law and we review the interpretation of RCW 13.04.030(1)(e)(v) de novo. *See State v. J.P.*, 149 Wn.2d 444, 449, 69 P.3d 318 (2003). RCW 13.04.030 allows the juvenile court exclusive jurisdiction over juvenile offenses unless certain circumstances arise. Here, we are only concerned with RCW 13.04.030(1)(e)(v). This section automatically transfers jurisdiction to the adult court if “[t]he juvenile is sixteen or seventeen years old and the alleged offense is” an

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enumerated crime. RCW 13.04.030(1)(e)(v)(A)-(E). The statutory automatic transfer is an exception to the normal decline procedures and does not require or permit a decline hearing. *See* RCW 13.40.110 (explaining normal decline hearing process); *Boot*, 130 Wn.2d at 557 (interpreting what is now RCW 13.04.030(1)(e)(v)(A) and (B)). Therefore, if the statute applies to a defendant, the juvenile court does not have discretion to assign juvenile court jurisdiction and the defendant cannot be prejudiced based on loss of juvenile court jurisdiction.

The two elements in RCW 13.04.030(1)(e)(v) that trigger automatic decline are (1) the age of the offender and (2) the nature of the offense. Here, the nature of the offense clearly falls within the statute because Salavea was charged with first degree rape of a child.³ RCW 13.04.030(1)(e)(v)(C). However, Salavea and amicus argue that the age element was not met because the age at the time of commission of the crime, rather than the age at the time of proceedings, is controlling. Based on this interpretation, Salavea concludes that the statute does not apply to him because he was only 13-15 years of age when he committed the crimes.

In light of previous case law, the clear wording of the statute, and legislative intent we disagree with Salavea and find the age of the individual at the time of the

³ Salavea was also charged with child molestation. It is appropriate that if any charges come under exclusive adult court jurisdiction (here child rape), all related charges fall under adult court jurisdiction. *See Boot*, 130 Wn.2d at 575 (noting that once a juvenile is under adult court jurisdiction, juvenile jurisdiction is lost).

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proceedings is the controlling age. Although the offenses occurred when Salavea was ages 13-15, the earliest the State could charge and try Salavea was after he was 16. Therefore, the age prerequisite is satisfied, the court did not have discretion to assign juvenile court jurisdiction, and Salavea fails to prove prejudice.

a. Case Law

Washington precedent supports the premise that absent intentional or negligent prosecutorial delay, “jurisdiction over offenses committed by a juvenile is to be determined at the time proceedings are instituted against the offender.” *Calderon*, 102 Wn.2d at 351-52; *Sweet v. Porter*, 75 Wn.2d 869, 870, 454 P.2d 219 (1969) (stating that determination of jurisdiction is based on the date of trial, not the date of the arrest, information, or plea); *State v. Setala*, 13 Wn. App. 604, 606-07, 536 P.2d 176 (1975); *State v. Bushnell*, 38 Wn. App. 809, 811, 690 P.2d 601 (1984). In *Calderon* the court was not applying the automatic decline statute. However, like Salavea, the defendant argued that jurisdiction should be based on the age at commission of the crime, not the age when proceedings were instituted. The court rejected the argument and held that juvenile court jurisdiction ends when a defendant becomes 18 unless jurisdiction has been extended by law. *Calderon*, 102 Wn.2d at 349; *see also id.* at 350-52 (discussing and upholding *State v. Ring*, 54 Wn.2d 250, 339 P.2d 461 (1959), and

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State v. Kramer, 72 Wn.2d 904, 435 P.2d 970 (1967)).⁴ Therefore, it is clear that *Calderon* and its progeny support reading the age element in RCW 13.04.030(1)(e)(v) as age of the defendant at the time of the proceedings, regardless of age at commission of the crime.

b. Statutory Construction

When a statute is clear on its face and unambiguous, the court does not have to engage in an interpretation of the language. *State v. Q.D.*, 102 Wn.2d 19, 29, 685 P.2d 557 (1984). Statutory inquiry ends with the plain language of the statute and the court assumes the legislature “means exactly what it says.” *State v. Delgado*, 148 Wn.2d 723, 727-28, 63 P.3d 792 (2003) (quoting *Davis v. Dep’t of Licensing*, 137 Wn.2d 957, 964, 977 P.2d 554 (1999)) (noting that words and clauses are not added to unambiguous statutes and criminal statutes are interpreted in a literal and strict manner). In *Boot* the court found RCW 13.04.030(1)(e)(v)(A) and (B) unambiguous and concluded that “[t]he legislature set up ‘exclusive original jurisdiction’ in adult court over juveniles 16 or 17 years of age who committed the enumerated violent offenses.” 130 Wn.2d at 565.⁵ Although Salavea’s crimes come under subsection (C)

⁴ Generally “[w]hen a juvenile cause is pending and not heard on its merits prior to the time the juvenile reaches 18 years of age, the juvenile court loses jurisdiction over the cause.” *Kramer*, 72 Wn.2d at 907.

⁵ *Boot* interpreted RCW 13.04.030(1)(e)(iv), which is a former version of what is currently RCW 13.04.030(1)(e)(v)(A) and (B). This version uses the exact same language for the age prerequisite as the current statute. *Boot*, 130 Wn.2d at 561-62.

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of the statute, the same age prerequisite applicable to subsections (A) and (B) is applicable to subsection (C). Therefore, the court's conclusion clearly finding the statute unambiguous is applicable to this case.⁶

Salavea and amicus argue that the statute may be ambiguous, or conversely is unambiguous but should be interpreted to mean age at commission of the crime. Part of this analysis is based on Salavea's interpretation of the court's language in *Boot*. Salavea argues that the court's use of "commit" and "committed," in reference to application of the automatic decline statute, reflects the court's desire to interpret the age element as age at the time of commission. *See Boot*, 130 Wn.2d at 563, 573 (using "commit"), 560-61, 565 (using "committed").⁷ However, *Boot* cites *Calderon* and specifically upholds determination of jurisdiction based on the age of the defendant at the time of the proceedings. *Id.* at 575. Therefore, regardless of how the

⁶ Although the issue in *Boot* did not involve the age element of the statute, the court did not exclude the age element from its decision that the statute was unambiguous. *Boot*, 130 Wn.2d at 565; *see also id.* at 558, 571 (stating the issues of the case and later noting that both defendants were 16 at commission of the crimes).

⁷ *See also State v. Mora*, 138 Wn.2d 43, 49 n.2, 977 P.2d 564 (1999) (stating that the adult court has exclusive jurisdiction when a 16-17 year old commits a certain crime). However, *Mora* involved only the offense element of the statute; the age element was not an issue in the case. *Id.* at 46 n.1, 48 (stating that the issue is amendment of charges and establishing defendant's age as 17 at time of offense).

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court used “commit” in its opinion, it is clear that *Boot* did not hold the age element in RCW 13.04.030(1)(e)(v) refers to age at the time of commission of the crime.⁸

Moreover, if the legislature wanted the age element in RCW 13.04.030(1)(e)(v) to refer to age at the time of commission, it could have used language indicating this. As we have previously held, the court “cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.”⁹ *Delgado*, 148 Wn.2d at 727. We reaffirm *Boot* and *Calderon*, and find the statute unambiguously refers to age at the time of the proceedings.

c. Legislative Intent

Additionally, our reading of the statute upholds the intent of the legislature in enacting the automatic decline provision. The legislature wanted to address the problem of youth violence “by increasing the severity and certainty of punishment for

⁸ Although some appellate courts agree with Salavea’s interpretation and conclusion regarding the language in *Boot*, we disagree with those courts. See *State v. Stackhouse*, 88 Wn. App. 963, 968-69, 947 P.2d 777 (1997) (citing *Boot* and interpreting the statute to require defendant to be 16 or 17 at the commission of the offense); *State v. Gilmer*, 96 Wn. App. 875, 882, 981 P.2d 902 (1999) (same).

⁹ The court has interpreted some statutes that do not say “committed by a child of X age” to mean the age of the child at commission of the crime, but the court is not required to do so. See *Q.D.*, 102 Wn.2d at 21-22 (interpreting Washington’s capacity statute to mean age at the time of commission). Amicus also argues that other states with automatic decline statutes focus on age at the time of commission of the crime. Amicus Curiae Br. of the Wash. Ass’n of Criminal Def. Lawyers at 16-20. Although these states have chosen to focus on the age at the time of commission, other state statutes are merely persuasive authority, not binding authority.

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youth who commit violent acts” as opposed to “youthful offenders who commit other crimes.” *State v. Mora*, 138 Wn.2d 43, 50, 54, 977 P.2d 564 (1999) (focusing on the seriousness of the offense); *see Boot*, 130 Wn.2d at 562-63, 566 (listing the six purposes of the bill enacting the automatic decline provision and citing Laws of 1994, 1st Spec. Sess., ch. 7, § 101). Automatically declining juveniles who commit certain offenses and are tried when they are 16 or 17 years of age properly would serve the intent of the legislature.

Salavea and amicus argue that adopting the State’s interpretation would result in an absurd result. They fear that a juvenile who commits an enumerated offense at age 9, but is not prosecuted until age 16, will not receive a decline hearing. However, a juvenile who commits an offense at age 14 and is prosecuted at age 15 will receive a decline hearing. This interpretation leads to an unjust result because it may allow the prosecution to circumvent the juvenile justice system. Further, it seems that a 9 year old is less culpable (e.g., has less capacity to commit a crime) than a 14 year old and should therefore be more deserving of a decline hearing. *State v. Vela*, 100 Wn.2d 636, 641, 673 P.2d 185 (1983) (explaining that statutes “should receive a sensible construction to effect the legislative intent and, if possible, to avoid unjust and absurd consequences”); *see also Q.D.*, 102 Wn.2d at 22-23. However, this result can be avoided if the 16 year old can prove prosecutorial delay. Because defendants have the

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option of avoiding the unjust result by proving prosecutorial delay, our reading does not produce an absurd result.

In conclusion, we construe the age element in RCW 13.04.030(1)(e)(v) to refer to age at the time of the proceedings. Previous case law, the clear language of the statute, and legislative intent provide strong grounds for this interpretation. In light of this conclusion, we find Salavea fails to prove loss of juvenile court jurisdiction. Salavea was 16 at the earliest charging and trial date. Based on his age and the nature of the crime, RCW 13.04.030(1)(e)(v)(C) would have mandated that Salavea be tried in adult court. Therefore, any subsequent delay in charging did not cause Salavea to lose juvenile court jurisdiction because he was never entitled to juvenile court jurisdiction.

B. Prongs Two and Three: State's Reasons and Balancing Test

We need consider the State's reasons for delay only if Salavea proves prosecutorial delay prejudiced his defense. *See Norby*, 122 Wn.2d at 264 (stating that a defendant must show that he was prejudiced by the delay in order to prevail); *Lovasco*, 431 U.S. at 790 (explaining that generally proof of prejudice is a necessary element of a due process claim). Salavea bases his prejudice argument on loss of juvenile court jurisdiction. In light of our interpretation of RCW 13.04.030(1)(e)(v), Salavea had to be less than 16 years old at the time of proceedings to be entitled to juvenile court jurisdiction. Therefore, although we find that Salavea did not prove he

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was prejudiced, we discuss the State's reasons for delay to the extent that these reasons show the earliest charging and trial date was after Salavea turned 16 years old.

Absent extraordinary circumstances, a juvenile's case is managed in the same manner as all other cases and does not receive special treatment even if the juvenile is about to turn 18. *Calderon*, 102 Wn.2d at 354. The State has broad discretion to decide when to prosecute and may delay prosecution until it feels it can establish guilt beyond a reasonable doubt. *State v. Lidge*, 111 Wn.2d 845, 850, 765 P.2d 1292 (1989); *see also Lovasco*, 431 U.S. at 795. Broad discretion is allowed because the court does not want the State to mistakenly charge an innocent person or bring cases that are insubstantial and result in a waste of judicial resources. *Lidge*, 111 Wn.2d at 850.

Encompassed in prosecutorial discretion is the need for the prosecution to undertake an investigation. An investigation may not occur until the charges are reported, but once reported a court should evaluate the investigation for deliberate or negligent delay. *See Warner*, 125 Wn.2d at 890-91 (noting that a reason for delay may be a delay in reporting). However, if an investigation follows standard practices, the delay caused is considered a justified investigatory delay and rebuts accusations of deliberate or negligent inaction. *Calderon*, 102 Wn.2d at 354; *Dixon*, 114 Wn.2d at 865-66; *Lovasco*, 431 U.S. at 795-96.

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No. 73642-1

Here, the charges were not reported to the police until August 1998. The juvenile court's prosecutor's office received the investigative file on September 29, 1998, child interviews were conducted the following month, and a detective tried to contact Salavea through the end of November. Therefore, the delay between the time the charges were committed and December 1998 may be justified by a delay in reporting, an investigatory delay, and the right of the prosecution to exercise discretion in filing charges.

Salavea turned 16 on October 9, 1998. The earliest the State could have charged and tried Salavea is after the justified investigatory delay at the end of November 1998. This means that Salavea would have been 16 at the time of the proceedings, the automatic decline statute would have applied to him, and he would have been automatically declined to adult court jurisdiction. Therefore, any argument that Salavea was prejudiced by a loss of juvenile court jurisdiction fails because he was never entitled to juvenile court jurisdiction. In light of this conclusion, we need not consider the rest of Salavea's delay arguments or prong three of the prosecutorial delay test.

CONCLUSION

We interpret the age element of RCW 13.04.030(1)(e)(v) as age at the time of proceedings. Previous case law, the plain language of the statute, and the legislative intent support this reading. Absent prosecutorial delay, if a defendant commits an

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enumerated act when he/she is less than 16 years of age but is not charged and tried until after he/she is 16, then the defendant must be automatically declined under RCW 13.04.030(1)(e)(v). In light of our interpretation of RCW 13.04.030, Salavea fails to show that he would not have been automatically declined. Salavea was 16 after the justified investigatory delay and the automatic decline statute mandated he be tried in adult court. Therefore, any subsequent prosecutorial delay did not cause a loss of juvenile court jurisdiction, and prejudice his defense, because he was never entitled to juvenile court jurisdiction.

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We affirm the Court of Appeals.

Owens, J.

WE CONCUR:

Alexander, C. J.
Johnson, J.
Madsen, J.

Ireland, J.
Briggs, J.
Chandler, J.
Fairhurst, J.



STATE OF WASHINGTON, County of Pierce
ss: I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
day of **JUN 28**, 20**12**
Kevin Stock, Clerk

APPENDIX “D”

Court’s Instructions to the Jury

CERTIFIED COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

NO. 00-1-05147-8

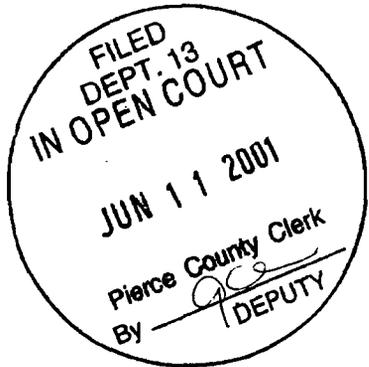
vs.

DYNAMITE SALAVEA,

Defendant.

COURT'S INSTRUCTIONS TO THE JURY

DATED this 11 day of June, 2001.



Kathryn J. Nelson

 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.

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.

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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. 11

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. 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.




STATE OF WASHINGTON, County of Pierce
 ss: I, Kevin Stock, Clerk of the above
 entitled Court, do hereby certify that this
 foregoing instrument is a true and correct
 copy of the original now on file in my office.
 IN WITNESS WHEREOF, I hereunto set my
 hand and the Seal of said Court this
 day of JUN 28, 2012
 By Kevin Stock Clerk 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 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,

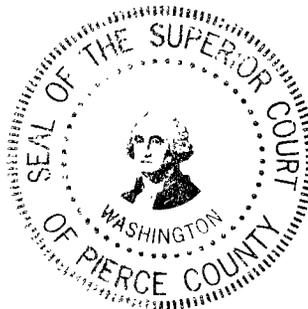
Defendant.

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



STATE OF WASHINGTON, County of Pierce
I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
day of JUN 28, 2012

Kevin Stock
[Signature]

PIERCE COUNTY PROSECUTOR

June 28, 2012 - 1:51 PM

Transmittal Letter

Document Uploaded: prp2-428636-Response.pdf

Case Name: In re the PRP of: Dynamite Salavea

Court of Appeals Case Number: 42863-6

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: ____
- Answer/Reply to Motion: ____
- Brief: ____
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: _____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

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