

Ruling to stand in Richland beating, rape case

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Tri-City Herald

February 4, 2014 Updated 17 hours ago



Cody Joseph Kloepper, left, seen here with defense attorney Dan Arnold, took the stand in August, 2011 during his rape trial at Benton County Superior Court. Kloepper is charged with first-degree rape, first-degree assault and first-degree burglary with the allegation that a deadly weapon was used for a Dec. 2009 attack. TRI-CITY HERALD FILE

A 36-year-old man's conviction for the violent beating and rape of a Richland woman will stand because the evidence pointed at him as the assailant, even if the victim initially picked the wrong suspect, an appellate court said Tuesday.

Cody J. Kloepper matched the description the woman first gave to police in 2009, though she picked another man from a group of photos.

Further investigation and DNA evidence led to charges against Kloepper and a Benton County Superior Court jury's eventual finding of guilt for first-degree assault, first-degree burglary and first-degree rape, all with a deadly weapon.

Kloepper took issue on appeal that Judge Carrie Runge allowed the victim to testify and point to him as the attacker. The woman had changed her identification of the suspect about 12 weeks after Richland police detectives informed her that evidence found in a latex glove excluded the man who initially was charged with the crime.

A three-judge panel of the Washington state Court of Appeals said Tuesday that the trial court did not abuse its discretion because defense attorneys "effectively impeached" the victim on cross-examination by questioning her reliability. The appellate court also noted that, if anything, the woman's change prevented a misidentification.

Kloepper, now 36, is serving a mandatory minimum sentence of 24 1/2 years in Coyote Ridge Corrections Center. He has been classified as "long-term minimum custody" at the Connell prison, a state Department of Corrections spokesman said.

Kloepper has maintained his innocence in the attack on Dana Widrig, who went public with her story a year ago in the Herald as she pushed for a change in the state's Landlord-Tenant Act.

Kloepper was a maintenance worker at The Villas at Meadow Springs in south Richland when he took a key for Widrig's apartment from the complex office and broke into her place.

Deputy Prosecutor Terry Bloor, who handled the case with Deputy Prosecutor Kristin McRoberts, said he appreciated the Court of Appeals' opinions.

That included the majority opinion from Chief Judge Kevin M. Korsmo, affirming the conviction by saying the defense and trial judge did nothing wrong, and a dissenting opinion from Judge Stephen Brown, who argues Kloepper's minimum prison term should be reduced because he believes the assault and the rape were all one act and not separate crimes.

"I was very happy that all of the justices agreed the conviction was appropriate and the conviction was valid," Bloor told the Herald.

Early in the morning on Dec. 5, 2009, Kloepper used his master key to get into the manager's office and to access a lock box that held keys to all 286 units at The Villas.

Kloepper admitted getting a key out of the box, but denied it was to Widrig's apartment. He said he took a key to a vacant apartment in a different building and slept there overnight.

But when Widrig woke up and went to the kitchen to make coffee, Kloepper snuck up behind her and began beating her with a metal bar. She ended up needing 43 stitches in her head and suffered a shattered arm and wrist. She has said her arms and hands are slightly, yet permanently, disabled.

Widrig moved to Seattle after she was released from a Spokane hospital. She sued the owner of the Gage Boulevard apartment complex and two companies hired to manage the property for negligence, and settled the case for an undisclosed amount of money. The terms of the settlement reportedly didn't require the companies to admit any wrongdoing.

In April, Gov. Jay Inslee signed House Bill 1647, also known as the Safe Keys Bill, which says landlords must secure extra keys with "reasonable care."

Widrig was a driving force behind the new law. It doesn't set a universal standard for securing keys, but gives each landlord flexibility, depending on their individual situation, to protect both landlords and tenants.

In the appeal, Kloepper also said the trial court erred by not dismissing a juror who revealed in a note after selection that he'd learned his parents were friends with Widrig's parents. The appellate court noted that it didn't amount to bias because the juror said he only was an acquaintance of the victim, hadn't seen her in about 40 years and probably wouldn't recognize her.

Kloepper also claimed ineffective assistance of counsel by lawyers Dan Arnold and Alexandria Sheridan. He believed the attorneys should have objected to a detective's statement to the jury that Kloepper's picture and information was in a system used to record contacts with police. He said that could have suggested he had a criminal history.

The appeals opinion said there's no evidence the defense was ineffective because the "decision to object, or to refrain from objecting even if testimony is not admissible, is a tactical decision not to highlight the evidence to the jury."

Judge Brown agreed with his colleagues on everything except the issue of Kloepper's consecutive prison terms. In his dissenting opinion, Brown said the sentences should be served at the same time -- and not back-to-back, as ordered by Judge Runge -- because the facts show the assault and rape weren't separate and distinct acts, but the "same criminal conduct."

"Three parts of the record show Mr. Kloepper's criminal intent from beginning to end was assaulting (Widrig) to accomplish her rape," he wrote.

Kloepper was on a "search for random sex" when he entered the victim's apartment shirtless early on a freezing winter's day and began brutally assaulting her, Brown said. Kloepper's intent became plain to Widrig and she submitted to end the attack, which means "the assault furthered the rape," he wrote.

Brown also noted that Kloepper brought latex gloves with him, planning to sexually assault the woman, and at the end of the ordeal, threatened to "come back and finish it off" if she reported him. The appeals judge believes the threat was "singularly referring to the brutal rape," and supports his lone opinion that Kloepper should be resentenced and ordered to do all of the time at once.

Bloor told the Herald he anticipates that Kloepper will file a petition for review with the Washington Supreme Court because it is almost standard for a criminal to continue pursuing his appeal. He added that "it's probably fair to say" that the state's highest court may take a look at the case because of the one disagreement.

"I think the court was on really strong footing to say the conviction was properly attained, and I think the decision by the majority, Judge Korsmo's decision, really set out the basic principal on the sentence," Bloor said. "It could have gone either way, but I think the Court of Appeals should give some credence and discretion to the trial court, who actually heard the case and made the decision about whether it should run concurrently or consecutively."

No matter what, Bloor noted that Kloepper's ultimate release is going to be up to a state sentencing review board "to decide if and when he ever gets out." The convicted rapist got a maximum sentence of life for the sex crime so, if the Supreme Court takes it up, it only should be to address Kloepper's minimum term, which in Bloor's mind is "something of a minor issue."

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