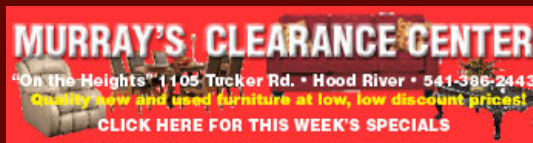




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The Dalles Chronicle

Teen Not Guilty

Judge rules for defendant in rape trial



By [RaeLynn Ricarte](#)

As of Wednesday, August 28, 2013

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The Dalles — The teenage defendant in a local rape case broke into a smile and then began crying Tuesday after being exonerated of eight charges brought against him by the state on behalf of an ex-girlfriend.

“I will see all you guys at home,” he said turning to his weeping parents and the small crowd of tearful relatives and friends who were hugging each other. His name is being withheld because he was 17 at the time of the criminal case that involved a 15-year-old girl, whose identity is also being protected, began in July 2012.

The boy’s mother, who spoke on the condition of anonymity, said the family is losing their home as a result of legal bills accrued in the case.

“But it is all worth it,” she said after hearing the verdict.

Taking a risk

During the six-day trial that began Aug. 19, the defendant was lodged in the regional jail for violating his release agreement. His offense was communicating with an underage female, which had been prohibited by Circuit Judge Janet Stauffer after his arrest. It was the second time the boy had been put behind bars for violating that directive.

The charges against him included first-degree rape and first-degree sodomy, which fall under Measure 11 mandatory sentencing guidelines. If convicted, he faced up to 20 years in prison and a minimum of eight years, four months.

After Stauffer ruled on the afternoon of Aug. 27 that the state had failed to prove its case “beyond a reasonable doubt,” the defendant was placed in shackles and returned to the Northern Oregon Regional Correctional Facilities. But he was only going to be incarcerated long enough to get his paperwork processed and then freed to join his supporters for dinner.

“I’m trained not to show emotion but I’m as excited right now as I can get – I’m ecstatic,” said defense attorney James Leuenberger of Lake Oswego about Stauffer’s decision.

Even knowing that he could spend two decades behind bars, Leuenberger said the defendant was willing to “risk everything” to prove his innocence. He said a plea deal offered by the state would have eliminated most of the charges against the teen but the boy was adamantly opposed to any sort of a settlement.

“If he weren’t certain that he hadn’t committed a crime, he probably would have accepted the deal,” said

Leuenberger.

Racial bias concern

The attorney admitted that he was “worried” about the potential outcome of a trial because the defendant was a Mexican male accused of raping a white female.

“I think that I was brought in by the family because I’m not from here and there seems to be a perception among the Hispanic community in The Dalles that public defenders are not as aggressive about defending the accused.”

Racial bias was one of the reasons Leuenberger gave for petitioning Stauffer to waive a jury trial and render the verdict herself.

Wasco County Chief Deputy District Attorney Leslie Wolf objected to that option, arguing that the community needed to be represented by 12 jurors weighing the evidence before a decision was made.

She and District Attorney Eric Nisley tried to get Stauffer removed from the case for possible bias. In July, they lost a bid at the state level to have her replaced with another judge.

Their decision was based, in part, on Stauffer’s statement during a hearing in 2012 that she knew many of the youth involved in the case, including several witnesses, because they had gone to school with her children. She did not specifically say that she was acquainted with either the defendant or the alleged victim, nor did she declare a conflict of interest.

Leuenberger did not raise the issue of race in the trial but did question the methods used by the Wasco County Sheriff’s Office and an Oregon State Police detective to build the case against his client.

Procedural

questions

He painted the picture of a small town’s law enforcement community drawing together to protect one of their own despite the harm done to a teenage boy. He said the case started July 4 or 5, 2012, when the girl left her Facebook page open on the family computer and her mother came across sexually explicit pictures and messages exchanged with the boy. She also found communication between her daughter and a former boyfriend in which the girl claimed to have been forced into sex by the defendant.

Armed with that information, Leuenberger said the girl’s father, a sheriff’s deputy, went to one of his peers, Wasco County Sheriff Sgt. Chris McNeel, and they bypassed The Dalles Police Department, which would normally have jurisdiction over the investigation because both parties live in town. Instead, the attorney said Detective Lori Rosebraugh of the Oregon State Police was asked to pursue the matter because she specialized in handling cases of sexual abuse.

“This was an agenda-driven investigation to protect the reputation of the law enforcement officer and his daughter,” said Leuenberger, who was assisted at the trial by Larry Olstad, a former attorney.

McNeel and Rosebraugh said on the stand that it was not uncommon for her to be placed in charge of cases involving women and children, because of her expertise in that field of criminal justice.

Leuenberger said Rosebraugh interviewed the girl July 10, 2012, but nowhere in her report was there any mention that she had followed up on statements of ambiguity and uncertainty. He said the girl’s comment “I was just kind of letting it happen” in reference to an alleged rape merited further exploration, as did similar assertions.

He said Rosebraugh went as far as inserting the word “rape” into the conversation when the girl paused in mid-sentence, which could have influenced her state of mind.

“Isn’t it true that investigators are to have an open mind and look for facts leading to innocence as well as

guilt?" he asked the detective, who replied "Yes."

Rosebraugh said she had been summarizing comments already made by the girl and not introducing a new word into the conversation.

Case begins

The defense attorney alleged that "false memories" might have originally been planted in the girl by her father, whose first question after finding out about the Facebook messages in July of 2012 was: "Is it true that he raped you?" He said the OSP detective then picked up that same theme in her role as an investigator.

Wolf said the phone call made by the girl July 11 to the defendant and recorded by Rosebraugh provided proof of the boy's guilt. In that conversation he alternated between being angry and crying as the girl repeatedly demanded that he "tell the truth" about what happened between them. He then tearfully admitted to "practically raping" her and "never being able to forgive himself" for causing her hurt.

"He knows her, he knows when she's angry. 'No' was clear — he knew," said Wolf, who described the boy as "controlling and manipulative" in his interactions with the girl.

The defendant said the girl did not tell him until June 19, 2012, that she had involuntarily participated in two sexual acts. At that time, she informed the boy that a nightmare had led her to the realization that he had forced her to have oral sex in February and intercourse in March of that year.

The boy told Stauffer those allegations were initially shocking and caused him great emotional distress — but he still wanted to repair the relationship. By the time the recorded phone call was made in July, he claimed to have been too emotionally distressed to continue asserting his innocence.

"She had been continuing to say I had forced her to do something and I had started to go along with it to get back in her good graces," he said.

Motive questioned

According to Leuenberger, his client was taken by Rosebraugh to the police station July 13, even though she knew from the recorded phone call that he was not taking his usual medication for depression and his parents were in Mexico, leaving him with no guardian.

Leuenberger said the taped interview showed that Rosebraugh, once again, inserted "emotionally charged" words into her questioning to lead the boy toward statements that could be construed as admissions of guilt.

To make matters worse, he said, the detective was not armed with the full facts when she went into the interview. She admitted in court last week that she had not looked at all of the available "sexting" and Facebook messages exchanged between the couple before questioning either the girl or the boy.

"The thousands of messages show that [the girl] was a fully willing participant in everything that happened, that is certainly part of the history," said Leuenberger.

Relationship

dynamics

Wolf said the relationship between the girl and boy was by his rules, in his house and with his initiation of sexual acts. Because the girl cared about the defendant and wanted to be in the relationship, Wolf said she tried repeatedly to work things out despite the devastating effect on her own life.

Leuenberger countered by saying that the girl voluntarily went into the boy's room and participated in sexual activity. He said the defendant was continually given mixed messages and never knew where he stood with the girl, which created a lot of uncertainty and doubt in his mind. He said the girl continued to

send graphic pictures and messages even after making the accusations of rape and sodomy.

“One of the things that will be graphically evident, and chilling to hear (in the recorded conversation), is who is in charge of the relationship and it’s not [the defendant],” he said.

The relationship between the cheerleader and the soccer player, who worked part-time to add to the family income, began with walks home from The Dalles Wahtonka High School in fall 2011. She was 14 at the time they became a couple and, weeks later, began spending time alone in his bedroom behind a closed door.

The girl told Stauffer that she had been a virgin when the defendant forced her to have intercourse shortly after her 15th birthday. She explained the activity that followed, some consensual and some not, with this statement: “I felt like it really didn’t matter what happened to me now because I was already ruined. I was just really embarrassed.”

The boy told the judge that he fell in love with the girl almost from the first moment they started seeing each other and had even talked to her about marriage in the future.

“I cared about her a lot, I did see myself with her for a very long time,” he said. “My feelings kept growing stronger. There wasn’t a minute that I wanted to be away from her.”

Added charges

While going to counseling during the long wait for the trial, the girl reportedly came to the realization that she had also been forced by her ex-boyfriend into sexual encounters at her family house in early May 2012 and a friend’s house later that month. Four additional charges were added to the four that the boy was already facing.

“We are not here because of those sexual acts she agreed to, we are here because of the ones she didn’t agree to,” said Wolf. “What you will hear is a common theme, she didn’t want it, she fought him off and she lost.”

The girl said she did not tell anyone about the sexual abuse because she did not want the defendant arrested. Because she still had feelings for him, the girl said she was conflicted about how to deal with the situation. She was also worried about his anger and history of self-mutilation that was evidence of emotional instability. It was because of superficial cuts on his arms that she decided to break up with the boy on April 25, 2012, she said.

“I wanted him to be punished but I didn’t want to have to go through all this,” she said. “I still cared very much for him at that time. It was very confusing for me.”

School rumors

There had been rumors about rape going around school after the couple broke up, but Leuenberger said the girl reassured the boy that there was not a problem when he asked her about these allegations. And they had continued to be intimate in May of 2012 and exchange sexual messages into July.

The girl told Stauffer during one of two days that she was on the stand that sexting messages were intended to be “role playing” and not taken seriously.

“Sexting is meant to arouse the other person and that’s what I was doing,” she said, denying these messages were arrangements for further dalliances.

Two of her ex-boyfriends took the stand to tell Stauffer that they had been told by the girl about the rape in mid-June, weeks before the investigation began.

Seven teenagers took the stand to testify on behalf of the defendant. They all said the girl appeared to be happy in the relationship and they had not noticed any change in her demeanor during the spring months of 2012, nor had she said anything about abuse.

“They looked happier than ever, like, she was glowing,” said one male who had been present when the couple returned to a group setting in late May after having sex in a camp trailer. She later claimed that two of the four acts of intercourse were forced upon her by the defendant.

A female teen said she had walked into the boy’s bedroom one day in the spring and found the couple engaged in sexual activity, which everyone had laughed about after the initial embarrassment was over. The girl later claimed that act was also forced upon her, that she had not been feeling well and had gone to the defendant’s home instead of school to rest.

No laughing matter

The girl said it was a common practice for her to laugh when she was nervous or placed in a potentially controversial situation.

“I laugh at everything, I’ve always been like that,” she said.

Wolf said the defendant knew her well enough to pick up on that trait. Therefore, she said he could not use the laughter that followed a “No” as a license to move forward with a sexual act.

The girl, now 16, told Stauffer that she had lost most of her friends and been bullied and teased at school once the charges against the defendant were filed because the “influential people” took his side. She said in addition to being shunned and shoved up against walls, her peers wrote obscenities about her in their textbooks.

“There are no words to adequately express the grief that this community must now deal with,” said Nisley this morning.

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