

CASE#: 86-1-01741-7 SEA CRIM JUDGMENT# YES
 TITLE: STATE VS KONOPKA
 FILED: 04/23/1986 APPEAL FROM LOWER COURT? NO
 RESOLUTION: CVJV DATE: 10/09/1986 CONVICTED BY JURY
 COMPLETION: JODF DATE: 10/09/1986 JUDGMENT/ORDER/DECREE FILED
 CASE STATUS: DATE:

OFF-LINE DATE: 04/20/2001

ARCHIVED: 09/22/1996

CONSOLIDATED:

NOTE1: *CASE SETTING PG 1/\$STA 03-30-90/RESTITUTION PAID 07-09-90
 NOTE2: *SUB #26 SEALED *SUB #25.5 OUT OF SEQUENCE

-----PARTIES-----

CONN	LAST NAME,	FIRST MI TITLE	LITIGANTS	ARRAIGNED
PLA01	STATE OF WASHINGTON			
DEF01	KONOPKA, THOMAS C			

-----ATTORNEYS-----

CONN	LAST NAME,	FIRST MI TITLE	LITIGANTS	DATE
DPA01	FLACK, KATE			
ATD01	CONNICK, PETER			
WTD02	REIMAN, SCOTT			
WTD03	MADOR, ALAN			

-----SENTENCE-CHARGE-----

DEF01 KONOPKA, THOMAS C

DEF. RESOLUTION CODE: CVJV DATE: 10/09/1986 CONVICTED BY JURY
 DISP. JUDGE: SULLIVAN

SENTENCE DATE: SENTENCED BY: SULLIVAN
 SENTENCING DEFERRED: NO APPEALED TO: DIVISION I DATE APPEALED: 11/06/1986

PRISON SERVED.....	X	:	FINE.....	\$
PRISON SUSPENDED.....		:	RESTITUTION.....	\$ 170.00
JAIL SERVED.....		:	COURT COSTS.....	\$ 545.67
JAIL SUSPENDED.....		:	ATTORNEY FEES.....	\$ 470.00
PROB/COMM. SUPERVISION.....		:		

DUE DATE: PAID:

-----SENTENCE DESCRIPTION-----

CONVICTED BY JURY 3CTS. --CT1 SERVE 10Y DOC. PAY CV/PEN ASSMT \$50 W/IN 1Y.
 --CT2&3 SERVE 21M EA CT CONC DOC & CONC W/CT2. PAY REST/COSTS. PAY CV/PEN ASSMT \$70. MINIMUM TERM CT1 FIXED AT 21M. **DOC #922102

 04-10-87 ORDER PROVIDING COMP/EXPERT. \$400.00
 11-28-88 MANDATE/AFFIRMED. COSTS \$35.26 FOR STATE.
 01-26-89 JUDG & SNTC/POSTAPPEAL/CT1 ONLY.PAY CV/PEN ASST \$70 W/IN 24M. 10Y DOC SUSPD.
 01-26-89 JUDG & SNTC/POST APPEAL/CT 2 ONLY. SERVE 15M DOC CONC W/CT 1. PAY REST COSTS/ATTY FEES. PAY CV/PEN ASST \$70

CASE#: 86-1-01741-7 SEA CRIM JUDGMENT# YES
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-----CHARGE INFORMATION-----
 RS CNT RCW/CODE DESCRIPTION INFO/VIOL. ---PCN---
 DATE
 ----- ORIGINAL INFORMATION 04/23/1986
 1 9A.44.100 INDECENT LIBERTIES
 2 9A.44.100 INDECENT LIBERTIES
 ----- 1ST AMENDED INFORMATION 06-20-86
 G 1 9A.44.100 INDECENT LIBERTIES
 G 2 9A.44.100 INDECENT LIBERTIES
 G 3 9A.44.100 INDECENT LIBERTIES

-----APPEARANCE DOCKET-----
 SUB# DATE CD/CONN DESCRIPTION SECONDARY
 - 04/23/1986 \$CHC CHARGE COUNTY 70.00
 1 04/23/1986 INFO INFORMATION
 2 04/23/1986 ORW ORDER FOR WARRANT - PR
 2.5 04/30/1986 NTARD NOT OF APPEAR AND REQ FOR DISCOVERY
 3 05/01/1986 NTOHS NOTICE OF OMNIBUS HEARING SETTING 05-21-86
 4 05/01/1986 OR ORDER PROHIBIT CONTACT
 5 05/01/1986 OBAD OBJECTIONS TO ARRAIGNMENT DATE
 - 05/01/1986 ARRAIGN ARRAIGN CAL/CARROLL/RUNNELS
 6 05/09/1986 \$\$SHRTWA SHERIFF'S RETRN ON WARRNT OF ARREST 15.50
 7 05/21/1986 ORSTD ORDER SETTING TRIAL DATE 07-23-1986TC
 - 07/23/1986 NOTE HOLD 07-28-1986TO
 ACTION INDECENT LIBERTIES, CTS I-III
 ACTION 07-30-86/NO LENGTH GIVEN
 - 05/21/1986 PREHRG OMNIBUS CAL/CARROLL/SULLIVAN
 8 05/21/1986 OOR OMNIBUS ORDER
 9 05/21/1986 OMAD OMNIBUS APPLICATION BY DEFENDANT
 10 05/21/1986 OMAPA OMNIBUS APPLICATION OF PROS ATTY
 11 06/09/1986 SB SUBPOENA
 12 06/09/1986 SB SUBPOENA
 13 06/11/1986 SHRT SHERIFF'S RETURN
 14 06/20/1986 ORPFAI ORD PERMITTING FILING AMENDED INFO
 15 06/20/1986 AMINF AMENDED INFORMATION
 - 07/03/1986 NOTE 07-11-198602
 ACTION 1:30/30 MINS./TD ----
 ACTION INDECENT LIBERTIES CTS I-III
 ACTION STATE'S MTN TO COMPEL DISCOVERY
 16 07/08/1986 NTSPTH NOTICE SETTING FOR PRE-TRIAL HEARIN
 - 07/11/1986 MINUTE C/R NONE
 JDG02 JUDGE LLOYD BEVER, DEPT 2
 17 07/14/1986 OR ORDER GRANTING MOTION FOR DISCOVERY
 18 07/17/1986 SB SUBPOENA
 - 07/23/1986 MINUTE TRIAL CAL DIXON
 - 07/23/1986 HOLD HOLD CASE UNTIL 07-28-86
 19 07/24/1986 \$\$SHRSS SHERIFF'S RETRN OF SERV ON SUBPOENA 18.00
 20 07/24/1986 \$\$SHRSS SHERIFF'S RETRN OF SERV ON SUBPOENA 68.50
 21 07/25/1986 SB SUBPOENA
 - 07/28/1986 PREHRG C/R DON LAHAY
 JDG07 JUDGE FRANK L SULLIVAN, DEPT 7
 ORALLY AMENDED DATE IN CT3
 - 07/28/1986 MINUTE TRIAL CAL DIXON

CASE#: 86-1-01741-7 SEA CRIM JUDGMENT# YES
 TITLE: STATE VS KONOPKA

-----APPEARANCE DOCKET-----

SUB#	DATE	CD/CONN	DESCRIPTION	SECONDARY
-	07/28/1986	AST	ASSIGNED TO SULLIVAN	
22	07/29/1986	PLPIN	PLAINTIFF'S PROPOSED INSTRUCTIONS	
23	07/29/1986	\$SHRSS	SHERIFF'S RETRN OF SERV ON SUBPOENA	17.00
-	07/29/1986	JTRIAL	C/R DON LAHAY	
		JDG07	JUDGE FRANK L SULLIVAN, DEPT 7	
-	07/29/1986	\$JFA	JURY FEE ASSESSED	50.00
-	07/30/1986	MINUTE	C/R DON LAHAY	
		JDG07	JUDGE FRANK L SULLIVAN, DEPT 7	
-	07/31/1986	MINUTE	C/R DON LAHAY	
		JDG07	JUDGE FRANK L SULLIVAN, DEPT 7	
23.5	08/04/1986	MINUTE	C/R DIANE STANLEY	
		JDG07	JUDGE FRANK L SULLIVAN, DEPT 7	
24	08/01/1986	SHRT	SHERIFF'S RETURN	
24.1	08/01/1986	CTINJY	COURT'S INSTRUCTIONS TO JURY	
24.2	08/04/1986	CTINJY	COURT'S INSTRUCTIONS TO JURY	
24.3	08/05/1986	VRD	VERDICT (GUILTY CTS1-3)	
24.4	08/05/1986	JYN	JURY NOTE	
24.5	08/05/1986	MINUTE	C/R DON LAHAY	
		JDG07	JUDGE FRANK L SULLIVAN, DEPT 7	
24.6	08/05/1986	MINUTE	NOT REPORTED	
		JDG07	JUDGE FRANK L SULLIVAN, DEPT 7	
24.7	08/05/1986	EXLST	EXHIBIT LIST (PRE-TRIAL ONLY)	
24.8	08/05/1986	EXLST	EXHIBIT LIST	
24.9	08/05/1986	STP6YR	STIP&ORD-EXHIB&DEPO-NO 30 DAY DESTR	
25	08/06/1986	OR	ORDER SEALING JUROR QUESTIONNAIRES	
25.5	08/05/1986	WTRC	WITNESS RECORD	
-	08/05/1986	\$WFA	WITNESS FEES ASSESSED	306.67
26	08/06/1986	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
27	08/06/1986	PRSIO	PRESENTENCE INVESTIGATION ORDER	09-22-86
		ACTION	9:00; SULLIVAN	
28	08/11/1986	MT	MOTION FOR PAYMT OF WITNESS EXPENSE	
29	08/13/1986	MT	MOTION FOR MAYMT OF WITNESS EXPENSE	
30	08/15/1986	MTNT	MOTN FOR NEW TRIAL	
31	08/27/1986	MT	MOTION FOR EXPERT SERVICES	
32	08/27/1986	ORES	ORDER FOR EXPERT SERVICES	
-	10/06/1986	\$NOTE	CALCULATION - COURT COSTS	
			S/D: 10/09/86 - SULLIVAN 07	
		MFILM	545.67	
33	10/09/1986	CFR	CONDITIONS FOR RELEASE - PR	
34	10/09/1986	RCP	RECEIPT(S) OF ADVICE	
35	10/09/1986	STPATTY	STATEMENT OF PROSECUTING ATTORNEY	
36	10/09/1986	JDS	JUDGMENT & SENTENCE /CT1	
-	10/09/1986	\$PACV	PENALTY ASSESSED - CRIME VICTIMS	50.00
		DEF01	KONOPKA, THOMAS C	
37	10/09/1986	JDS	JUDGMENT & SENTENCE /CT2&3	
-	10/09/1986	\$PACV	PENALTY ASSESSED - CRIME VICTIMS	70.00
		DEF01	KONOPKA, THOMAS C	
38	10/09/1986	ORFXT	ORDER FIXING MINIMUM TERM CT1	
39	10/09/1986	DISPHRG	C/R JERRY TREGO	
		JDG07	JUDGE FRANK L SULLIVAN, DEPT 7	
40	10/09/1986	CRTC	CERTIFICATE OF COMPLIANCE	

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 TITLE: STATE VS KONOPKA

-----APPEARANCE DOCKET-----

SUB#	DATE	CD/CONN	DESCRIPTION	SECONDARY
41	10/09/1986	MT	MOTION FOR NEW TRIAL/DEF	
42	11/06/1986	MT	MOTION FOR	
43	11/06/1986	ORPRFP	ORDER TO PROCEED IN FORMA PAUPERIS	
44	11/06/1986	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	
45	11/06/1986	LTRT	LETTER OF TRANSMITTAL	
46	11/06/1986	AF	AFFIDAVIT OF THOMAS KONOPKA	
47	11/13/1986	NTWDA	NOTICE OF WITHDRAWAL OF ATTORNEY	
48	11/13/1986	RCP	RECEIPT(S)	
49	11/18/1986	CRTC	CERTIFICATE OF COMPLIANCE	
50	12/11/1976	DSGCKP	DESIGNATION OF CLERK'S PAPERS	
51	12/26/1986	INX	INX TO CK'S PAPS-VOUCH 23.00	
52	12/26/1986	PNCA	PERFECTION NOTICE FROM CT OF APPLS #19570-1-I	
-	02/20/1987	VRPT	VERBATIM RPT TRANSMITTED 02-20-87 HRG AUG 4, 1986	
-	03/05/1987	VRPT	VERBATIM RPT TRANSMITTED 03-05-87 HRG OCT 9, 1986	
53	04/10/1987	ORPWE	ORDER FOR PAYMENT WITNESS EXPENSES	
-	04/10/1987	\$EXWFA	EXPERT WITNESS FEES ASSESSED	400.00
-	05/04/1987	VRPT	VERBATIM RPT TRANSMITTED 05-04-87 HRG OF 07-28-86-VOL I	
-	05/04/1987	VRPT	VERBATIM RPT TRANSMITTED 05-04-87 HRG OF 07-28-87-VOL II	
54	06/16/1987	DSGCKP	DESIGNATION OF CLERK'S PAPERS	
55	06/22/1987	INX	INDEX TO CK'S PAPS-VOUCH 11.00	
56	06/26/1987	LTTEAC	LTR OF TRNSMTTAL & RCP FOR EXHIBIT # 3 TRANMITTED TO C OF A	
57	09/17/1987	CFR	CONDITIONS FOR RELEASE PENDING AP- PEAL - NO BOND	
58	02/09/1988	DSGCKP	DESIGNATION OF CLERK'S PAPERS	
59	03/03/1988	INX	INDEX TO CLERK'S PAPERS-VOUCHERED	
-	03/03/1988	\$CLPA	CLERK'S PAPERS - FEE ASSESSED	5.00
60	11/15/1988	NTARD	NOT OF APPEAR AND REQ FOR DISCOVERY	
60.5	11/28/1988	MND	MANDATE #19570-1-I/AFFIRMED	
61	11/29/1988	LTRT	LETTER OF TRANSMITTAL & RCP FOR PLTF'S EXH #3 RETURNED FROM C OF A	
62	01/25/1989	DISPHRG JDG07	CR SHERI RUNNELS JUDGE FRANK L SULLIVAN, DEPT 7	
63	01/25/1989	MM	MEMORANDUM OF STATE RE SENTENCE/SUP	
64	01/26/1989	JDS	JUDGMENT & SENTENCE /CT1 ONLY	
-	01/26/1989	\$PACV DEF01	PENALTY ASSESSED - CRIME VICTIMS KONOPKA, THOMAS C	70.00
65	01/26/1989	JDS	JUDGMENT & SENTENCE POST APPEAL/CT 2 ONLY KONOPKA, THOMAS C	
66	02/13/1989	NTWSUB	NOTICE WITHDRAW & SUBSTITUT COUNSEL	
67	02/24/1989	NTWDA	NOTICE OF WITHDRAWAL OF ATTORNEY	
68	02/27/1989	WV	WAIVER - 30D DELAY	
69	03/03/1989	WC	WARRANT OF COMMITMENT	
69.5	03/06/1990	NTRL	NOTICE OF RELEASE	
69.6	03/06/1990	NTRL	NOTICE OF RELEASE	

CASE#: 86-1-01741-7 SEA CRIM JUDGMENT# YES
 TITLE: STATE VS KONOPKA

-----APPEARANCE DOCKET-----

SUB#	DATE	CD/CONN	DESCRIPTION		SECONDARY
70	03/08/1989	WC	WARRANT OF COMMITMENT		
-	07/12/1990	\$FFRCR	FILING FEE REC'D - CRIMINAL	+	70.00
-	07/12/1990	\$SFR	SHERIFF'S FEES RECEIVED	+	5.00
-	08/14/1990	\$SFR	SHERIFF'S FEES RECEIVED	+	100.00
-	09/14/1990	\$SFR	SHERIFF'S FEES RECEIVED	+	14.00
-	09/14/1990	\$JYFR	JURY FEE RECEIVED	+	50.00
-	09/14/1990	\$WTFR	WITNESS FEE RECEIVED	+	36.00
-	10/08/1990	\$SFR	SHERIFF'S FEES RECEIVED	+	100.00
-	11/14/1990	\$SFR	SHERIFF'S FEES RECEIVED	+	25.00
-	12/17/1990	\$SFR	SHERIFF'S FEES PAID; TRANSFER TO WITNESS FEES	-	125.00
-	12/18/1990	\$WTFR	WITNESS FEE RECEIVED	+	100.00
-	12/18/1990	\$WTFR	WITNESS FEE RECEIVED	+	25.00
-	12/19/1990	\$SFR	SHERIFF'S FEES RECEIVED	+	25.00
-	01/22/1991	\$SFR	OVERPAID SHERIFF'S FEE; TRANSFER TO WITNESS FEE	-	25.00
-	01/23/1991	\$WTFR	WITNESS FEE RECEIVED	+	25.00
-	01/23/1991	\$WTFR	WITNESS FEE RECEIVED	+	25.00
-	02/13/1991	\$WTFR	WITNESS FEE RECEIVED	+	25.00
-	03/04/1991	\$WTFR	WITNESS FEE RECEIVED	+	25.00
-	04/18/1991	\$JYFR	JURY FEE RECEIVED	+	25.00
-	05/10/1991	\$JYFR	JURY FEE PAID, TRANSFER TO WITNESS FEES	-	25.00
-	05/10/1991	\$WTFR	WITNESS FEE RECEIVED	+	25.00
-	06/28/1991	\$WTFR	WITNESS FEE RECEIVED	+	20.67
-	06/28/1991	\$NOTE	COSTS PAID		
-	06/28/1991	\$PRCV	PENALTY RECEIVED - CRIME VICTIMS	+	4.33
-	07/15/1991	\$PRCV	PENALTY RECEIVED - CRIME VICTIMS	+	25.00
-	08/13/1991	\$PRCV	PENALTY RECEIVED - CRIME VICTIMS	+	25.00
-	09/13/1991	\$PRCV	PENALTY RECEIVED - CRIME VICTIMS	+	15.67
-	09/13/1991	\$NOTE	CVP PAID (COUNT I)		
-	10/09/1991	\$PRCV	PENALTY RECEIVED - CRIME VICTIMS	+	25.00
-	10/09/1991	\$PRCV	PENALTY RECEIVED - CRIME VICTIMS	+	9.33
-	11/18/1991	\$PRCV	PENALTY RECEIVED - CRIME VICTIMS	+	25.00
-	12/10/1991	\$PRCV	PENALTY RECEIVED - CRIME VICTIMS	+	10.67
-	12/10/1991	\$NOTE	CVP (COUNT II) PAID		
-	12/10/1991	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	14.33
-	01/10/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	02/24/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	03/10/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	04/16/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	05/07/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	06/11/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	07/14/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	08/11/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	09/25/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	10/16/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	11/13/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	12/18/1992	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	01/12/1993	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	02/11/1993	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00

CASE#: 86-1-01741-7 SEA CRIM JUDGMENT# YES
TITLE: STATE VS KONOPKA

-----APPEARANCE DOCKET-----

SUB#	DATE	CD/CONN	DESCRIPTION		SECONDARY
-	03/12/1993	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	25.00
-	03/22/1993	\$FRPDR	FEE RECD-PUB DEFENSE RECOUPMENT	+	80.67
-	03/22/1993	\$NOTE	COSTS, CVP & PDR PAID		
71	04/01/1993	STFJG	SATISFACTION OF JUDGMENT AS TO MANDATE COSTS ONLY		
72	04/21/1993	FNDCCR	FINAL DISCHRG RESTORING CIVIL RIGHT		
-	05/07/1993	\$NOTE	\$25.00 WITNESS FEE PMT 5/13/91 NEVER DOCKETED - CAD TO OVERPAY- MENT FOR REFUND TO PAYER(BH)		
73	06/01/1993	MM	MEMORANDUM RE OVERPAYMENT		

-----END COPY CASE-----

1986 APR 23 PM 4:02

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

THOMAS C. KONOPKA,

Defendant.

NO. 86-1-01741-7

INFORMATION

WARRANT ISSUED
CHARGE COUNTY \$70.00

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the state of Washington, do accuse Thomas C. Konopka of the crime of indecent liberties, committed as follows:

That the defendant Thomas C. Konopka, in King County, Washington, during a period of time intervening between January 1, 1983 to June 30, 1984, did knowingly cause Jennifer Hieb, who was less than 14 years of age and not the spouse of the defendant, to have sexual contact with the defendant;

Contrary to RCW 9A.44.100(1)(b), and against the peace and dignity of the state of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse Thomas C. Konopka of the crime of indecent liberties, a crime of the same or similar character as Count I, which crimes were part of a common scheme or plan, committed as follows:

That the defendant Thomas C. Konopka in King County, Washington, during a period of time intervening between July 1, 1984 to September 30, 1985, did knowingly cause Jennifer Hieb, who was less than 14 years of age and not the spouse of the defendant, to have sexual contact with the defendant;

INFORMATION -1



NORM MALENG
Prosecuting Attorney
W554 King County Courthouse
Seattle, Washington 98104
583-2200

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Contrary to RCW 9A.44.100(1)(b), and against the peace
and dignity of the state of Washington.

NORM MALENG
Prosecuting Attorney

By *William A Jaquette*
WILLIAM A. JAQUETTE
Deputy Prosecuting Attorney

INFORMATION -2

2

NORM MALENG
Prosecuting Attorney
W554 King County Courthouse
Seattle, Washington 98104
583-2200

1
2
3 CAUSE NO. 86-1-01741-7

4 CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE


5 That William A. Jaquette is a Deputy Prosecuting Attorney
6 for King County and is familiar with the police report and
7 investigation conducted in King County Police case No. 86-032516;

8 That this case contains the following upon which this
9 motion for the determination of probable cause is made;

10 Jennifer Hieb was born on January 28, 1973. When she was
11 4½ years old, her mother married Thomas C. Konopka. Shortly
12 thereafter, Konopka began a pattern of sexually abusing Jennifer.
13 It began with incidents where he would expose himself to her.
14 Often he would hold her to him while his penis was erect. As she
15 grew, he would walk in on her while she was in the bathroom and
16 when she protested his presence he would yell at her and say that
17 he was her dad. He would come into her bedroom and watch her
18 change her clothes and yell at her when she tried to go into the
19 closet to change to get some privacy. Konopka would also engage
20 in wrestling with Jennifer and would take that opportunity to
21 touch her on her breasts and vagina. On about 20 occasions over
22 the last three years, Konopka would take Jennifer's clothes off
23 and pull her on top of himself and touch her vagina to his erect
24 penis until he ejaculated. These acts occurred while Konopka and
25 Jennifer's mother lived at either 19910 8th Avenue South, or 246
26 S. 186th Street, both in Seattle, King County, Washington.

The defendant should be ordered to have no contact,
direct or indirect with the victim, witnesses or other minors
pending resolution of these charges.

21 Under penalty of perjury under the laws of the State of
22 Washington, I certify that the foregoing is true and correct.
23 Signed and dated by me this 23 day of April, 1986, at Seattle,
24 Washington.

25 
26 WILLIAM A. JAQUETTE

Certification for Determination of Probable Cause

3
NORM MALENG
Prosecuting Attorney
W554 King County Courthouse
Seattle, Washington 98104
583-2200

SUPERIOR COURT CLERK
BY JOAN SCOTT
DEPUTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 THOMAS KONOPKA,)
)
 Defendant.)
 _____)

NO. 86-1-01741-7

VERDICT FORM A

We, the jury, find the defendant Thomas Konopka
GUilty of the crime of indecent liberties, as
charged in Count I.

We, the jury, find the defendant Thomas Konopka
GUilty of the crime of indecent liberties as
charged in Count II.

We, the jury, find the defendant Thomas Konopka
GUilty of the crime of indecent liberties as
charged in Count III.

Albert J. Knowles
FOREMAN

POSTED

24.3
my

AUG 05 1986

STATE OF WASHINGTON

vs. Plaintiff,

Thomas Konopka

86-1-01741-7

SUPERIOR COURT CLERK
BY JOAN SCOTT
DEPUTY

Witness For		Name	Defendant					Miles Per R.T.	Number Of Trips	Total Miles	Total Amount Due	Certificate Number
State	A-R		JUL 28 1986	JUL 29 1986	JUL 30 1986	JUL 31 1986	AUG 01 1986					
		Address (Include Zip Code)										
✓		OFFICER LAURENCE DALY SPECIAL ASSAULT UNIT SPD	✓	✓	✓	✓	✓	6				
✓		Jennifer Hieb c/o DPA KATE FLACK	✓	✓	✓	✓	✓	(5)		50 00	AUG 21 1986	
✓		JANET CHAMERON 8177 LOST VALLEY LANE DEXTER, OREGON 97431			✓			1		10 00	AUG 21 1986	
✓		Choni Hayes c/o DPA Kate Flack			✓			1		10 00	AUG 21 1986	
✓		Jean Harrington c/o DPA Kate Flack			✓	✓		2		20 00	AUG 21 1986	
✓		E. SCOTT HARTLEY 1208 S. 140 Seattle, WA 98168				✓		24	1	24	14 92	AUG 21 1986
✓		Bonnie Hartley 1208 S. 140 Seattle, WA 98168				✓		24	1	24	14 92	AUG 21 1986
✓		Susan Hartley 1208 S. 140 Seattle WA 98168				✓		24	1	24	14 92	AUG 21 1986
✓		ELVIA CROWWELL 2727 S. 131 SEATTLE WA 98168					✓	24	1	24	14 92	AUG 21 1986
								over				

DATED: AUG 04 1986, 19__.

Page Total

Examined and Found Correct:

Kate Flack
KATE FLACK D.P.A.

Approved and Allowed:

Frank L. Sullivan
FRANK L. SULLIVAN JUDGE/Dept #

POSTED 25.5
my

STATE OF WASHINGTON

KING COUNTY, WASHINGTON

AUG 05 1986

SUPERIOR COURT CLERK
BY JOAN SCOTT
DEPUTY

vs. Plaintiff,

THOMAS KONOPKA

Defendant.

No. 86-1-01741-7

Witness For	State	A-R	Name	Address (Include Zip Code)	DATE(S)				Miles Per R.T.	Number Of Trips	Total Miles	Total Amount Due		Certificate Number	
					AUG 01 1986	AUG 04 1986									
✓			Anita Velikanje X	10218 - 34 SW Seattle, WA 98146	✓				20	1	20	14	10		
✓			Maria Landgraf X	1216 SW 139 ST #136 Seattle WA 98166	✓				28	1	28	15	74	AUG 21 1986	
✓			Rebecca Castello X	19312 - 2 AV South Seattle, WA 98148	✓				22	1	22	14	51	AUG 21 1986	
✓			Gerald Slaminiski X	21012 Marine View Dr. Seattle, WA 98166		✓			28	1	28	15	74	AUG 21 1986	
✓			Larry Walkenmeyer X	1305 S. 223 Seattle, WA 98188		✓			32	1	32	16	50	AUG 21 1986	
✓			DAN PACK Y	20220 - 8 AV So Seattle WA 98198 98148		✓			22	1	22	14	51	AUG 21 1986	
✓			MELANY HANLEY X	2008 - 41 AV Kent WA 98032	✓	✓			42	2	84	37	22	AUG 21 1986	
✓			Kenneth D. Hanley X	22008 - 41 AV S. Kent WA 98031		✓			42	1	42	18	61	AUG 21 1986	
✓			Jennifer Hieb X	c/o DPP Kate Flaak		✓				6 (Total)		10	00	AUG 21 1986	
											Page Total		← over →		

DATED: AUG 04 1986, 19

Examined and Found Correct:

Kathleen Kersh
D.P.A.

Approved and Allowed:

Paul D. Sullivan
JUDGE/Dept #

WITNESS TIME SHEET AND COST BILL
Criminal, Juvenile and Mental Illness

Page 3 of 3 Pages

STATE OF WASHINGTON

vs. Plaintiff,

Thomas Konopka

Defendant.

No. 86-1-01741-7

FILED
KING COUNTY, WASHINGTON
AUG 05 1986

SUPERIOR COURT CLERK
BY **JOAN SCOTT**
DEPUTY

Witness For	Name	DATE(s)	Miles Per R.T.	Number Of Trips	Total Miles	Total Amount Due	Certificate Number
State <input checked="" type="checkbox"/>	OFFICER LAURENCE DALY SPECIAL ASSAULT UNIT SPD	AUG 04 1986 <input checked="" type="checkbox"/>		1			
DATED: <u>5 AUGUST</u> , 19 <u>86</u>			Page Total	306	67		

Examined and Found Correct:

KATE FLACK by [Signature]
KATE FLACK D.P.A.

Approved and Allowed:

[Signature]
JUDGE/Dept #

AUG 15 PM 30
SUPERIOR COURT
KING COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	NO. 86-1-01741-7
)	
Plaintiff,)	MOTION FOR NEW TRIAL
)	(CrR 7.6)
v.)	
)	
THOMAS KONOPKA)	
)	
Defendant.)	

COMES NOW the defendant, THOMAS KONOPKA,
 by his/her attorney, PETER T. CONNICK, and moves
 this Court for an order granting a new trial in the
 above-captioned cause pursuant to CrR 7.6 on the following grounds:

- (1) Receipt by the jury of any evidence, paper allowed by the court;
- (2) Misconduct of the prosecution or jury;
- (3) Newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial;
- (4) Accident or surprise;
- (5) Irregularity in the proceedings of the court, jury or prosecution, or any order of court, or abuse of discretion, by which the defendant was prevented from having a fair trial;
- (6) Error of law occurring at the trial and objected to at the time by the defendant;
- (7) That the verdict or decision is contrary to law and the evidence;
- (8) That substantial justice has not been done.

Motion - 1
0721C GFJ

POSTED

30
28

LAW OFFICES OF
THE PUBLIC DEFENDER
810 THIRD AVENUE
8TH FLOOR, CENTRAL BUILDING
SEATTLE, WASHINGTON 98104
(206) 447-3900

1
2 This motion is based on the specific reasons in fact and law
3 as hereafter noted and the records and files herein.

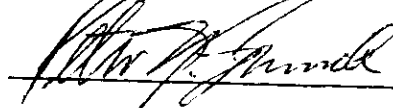
4 Reasons in fact:

- 5 1./ THE STATE FAILED TO MAKE ACCESS TO JENNIFER HIEB (VICTIM) AND JEAN KONOPKA
6 (VICTIM'S MOTHER) DESPITE REPEATED DEMANDS BY THE DEFENSE BEFORE TRIAL. THE
7 STATE ALSO FAILED TO MAKE ACCESS TO JEANNA CAMERON AND SHENI HAYES
8 BEFORE TRIAL DESPITE REPEATED DEMANDS BEFORE TRIAL. NO CONTINUANCE WAS ALLOWED ALTHOUGH REQUESTED.
9 2./ THE STATE FAILED TO DISCLOSE PROSECUTION WITNESSES (MELANIE AND KENNETH
10 HANLEY AND DAN PACK) DESPITE DEFENSE REQUESTS FOR DISCOVERY BEFORE TRIAL.
11 THESE PEOPLE WERE ALLOWED TO TESTIFY, NO CONTINUANCE WAS ALLOWED ALTHOUGH REQUESTED.
12 3./ JEAN KONOPKA TESTIFIED AS TO NAME OF THE CHURCH ASSOCIATED WITH THIS CASE -
13 I.E. THE COMMUNITY CHAPEL & BIBLE TRAINING CENTER AS WELL AS THE NAMES OF PEOPLE
14 ASSOCIATED WITH THE CHURCH (I.E. BARBARA BARNETTE - WIFE OF CONTROVERSIAL PASTOR
15 DON BARNETTE). JEAN KONOPKA ALSO TESTIFIED AS TO DOCTRINES RELATED TO THE
16 CHURCH (WITH RESPECT TO MARRIAGE). JEAN KONOPKA ALSO TESTIFIED AS TO PRIOR BAD
17 ACTS OF DEFENDANT (I.E. ALLEGATIONS OF "PEEPING" BY JENNIFER HIEB AND
18 JEANNA CAMERON AGAINST THE DEFENDANT. THE COURT GAVE A CURATIVE INSTRUCTION
19 ON THE MENTIONING OF THE CHURCH BUT NOT THE PRIOR BAD ACTS. DEFENSE COUNSEL
20 ASKED FOR BOTH INSTRUCTIONS AT SIDE BAR. THESE SUBJECTS WERE BARRED BY PRE-TRIAL ORDER.
21 4./ MINISTER SCOTT HARTLEY TESTIFIED AS TO PRIOR BAD ACTS (I.E. ALLEGED ADMISSION OF
22 EXPOSURE BY DEFENDANT TO THE MINISTER THAT OCCURRED 7 YEARS AGO AGAINST
23 JENNIFER HIEB).
24 5./ MINISTER SCOTT HARTLEY ASSERTED A CLERGYMAN - PENITENT PRIVILEGE WHICH THE
25 COURT WOULD NOT RECOGNIZE WITH RESPECT TO THE ALLEGED ADMISSION OF EXPOSURE
26 6./ THE STATE WENT INTO AREAS OF RELIGIOUS DOCTRINE WHICH WERE BARRED BY PRE-TRIAL ORDER.
27 7./ THE COURT DISALLOWED SUR-REBUTTAL WITNESSES BY THE DEFENSE DESPITE LATE DISCLOSURE
28 OF THE STATE'S REBUTTAL WITNESSES (I.E. THE HANLEYS AND DAN PACK) AND LATE ACCESS
29 TO THOSE WITNESSES.

- 30 Reasons in law:
31 8./ THE COURT LIMITED DEFENSE WITNESS TESTIMONY ON JENNIFER
32 HIEB'S REPUTATION FOR TRUTHFULNESS IN THE COMMUNITY, CONVERSELY,
33 THE COURT ALLOWED DAN PACK'S TESTIMONY ON JENNIFER HIEB'S
34 REPUTATION FOR TRUTHFULNESS DESPITE HIS ABSOLUTE LACK OF
35 KNOWLEDGE AS TO THAT SUBJECT
36 9./ THE COURT DENIED DEFENSE COUNSEL'S MOTION FOR MISTRIAL
37 DESPITE ADVERSE T.V. PUBLICITY DURING TRIAL AND AT
38 LEAST TWO JUROR'S ACKNOWLEDGEMENT THAT THE BROADCAST
39 WAS ON THEIR T.V.'S IN THEIR PRESENCE
40 1./ THE COURT SHOULD HAVE GRANTED A CONTINUANCE FOR EFFECTIVE ASSISTANCE OF COUNSEL
41 (CR 4.7; 3.4. STATE V. PRICE, 94 Wn.2d 310 (1980))
42 2./ THE COURT SHOULD HAVE GRANTED A MISTRIAL AFTER JEAN KONOPKA VIOLATED THE COURT'S
43 PRE-TRIAL ORDERS OR, ALTERNATIVELY, THE COURT SHOULD HAVE GIVEN CURATIVE INSTRUCTIONS
44 ON BOTH VIOLATIONS' (CR 7.6; ER 103)
45 3./ THE COURT SHOULD HAVE UPHOLD SCOTT HARTLEY'S CLERGYMAN - PENITENT PRIVILEGE
46 (RCW 5.60.060(3)) AS ASSERTED BY THAT MINISTER
47 4./ THE COURT SHOULD HAVE DISALLOWED ANY TESTIMONY ON PRIOR BAD ACTS BY DEFENDANT
48 BECAUSE OF THEIR REMOTENESS IN TIME AND PREJUDICIAL CHARACTER (ER 404; STATE V. IRVIN
49 5./ THE COURT SHOULD HAVE (ALLOWED) GRANTED A MISTRIAL DUE TO ADVERSE PUBLICITY
50 DURING TRIAL (STATE V. GITCHELL, 41 Wn. App. 820 (1985)).

51 DATED this 15th day of ^{AUGUST} ~~May~~, 1986.

52 Respectfully submitted,



53 Attorney for Defendant

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY
2 STATE OF WASHINGTON,)
3 Plaintiff,) NO. 86-1-01741-7
4 v.) DEFENDANT'S MOTION FOR NEW TRIAL
5 THOMAS CHARLES KONOPKA,) OR CONTINUANCE OF SENTENCING AND,
6 Defendant.) ALTERNATIVELY, SENTENCE
) RECOMMENDATION
))

7
8 Thomas Charles Konopka is before the Court for sentencing
9 upon his convictions of three counts of Indecent Liberties. He
10 has an offender score of 2 and a sentence range of 21 to 27 months
11 as to each count which are to run concurrent.

12 The defendant now moves for a continuance of this sentencing
13 hearing so that he may continue his investigation of witnesses
14 who are expected to impeach the testimony of the complaining victim
15 in this case on the direct subject of her accusations that she
16 had been molested by Mr. Konopka. The defense is specifically
17 attempting to contact Mr. Eddie Bell, who is a student at Mt.
18 Rainier High School. The defense is also seeking to determine
19 whether there are witnesses who reside in Yakima who may also be
20 able to provide this impeaching information.

21 If the Court is unwilling to grant a continuance for further
22 investigation, the defense moves at this time for a new trial on
23 the grounds that substantial justice was not done and that there
exists information and witnesses which, if called by the defense,
could substantially affect the outcome of the trial and which,

1 despite the exercise of due diligence, were not discovered by the
2 time of the trial herein.

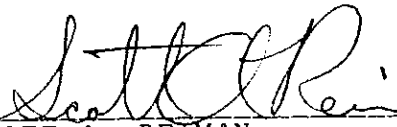
3 If both of the above-referenced defense motions are denied,
4 I recommend that Thomas Konopka be sentenced to a term of 21 months
5 in the Department of Corrections with credit for time served, if
6 any. However, the defense requests that bond on appeal be set
7 at a personal recognizance.

8 Mr. Konopka understands that he has been convicted of these
9 criminal offenses and that the Court must follow the law in the
10 imposition of his sentence.

11 Respectfully, he still wishes to assert that he is innocent
12 of the crimes charged against him. During the pendency of these
13 proceedings, he has attempted to show his respect for the legal
14 process by complying with all court appearances and in no way
15 obstructing the investigation or prosecution of this case. This
16 should be taken into consideration in the Court's rulings on the
17 various issues presented in this paper.

18 DATED this 8th day of October, 1986.

19 Respectfully submitted,

20 
21 _____
22 SCOTT A. REIMAN
23 Attorney for Defendant

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY
 2 STATE OF WASHINGTON,)
 3 Plaintiff,) NO. 86-1-01741-7
 4 v.) DEFENDANT'S MOTION FOR NEW TRIAL
 5 THOMAS CHARLES KONOPKA,) OR CONTINUANCE OF SENTENCING AND,
 6 Defendant.) ALTERNATIVELY, SENTENCE
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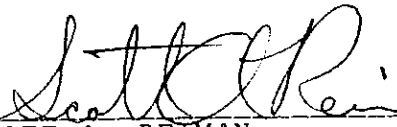
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11 Respectfully, he still wishes to assert that he is innocent
12 of the crimes charged against him. During the pendency of these
13 proceedings, he has attempted to show his respect for the legal
14 process by complying with all court appearances and in no way
15 obstructing the investigation or prosecution of this case. This
16 should be taken into consideration in the Court's rulings on the
17 various issues presented in this paper.

18 DATED this 8th day of October, 1986.

19 Respectfully submitted,

20 
21 _____
22 SCOTT A. REIMAN
23 Attorney for Defendant

In the Superior Court of the State of Washington
For the County of King

THE STATE OF WASHINGTON

Plaintiff,

vs.

Thomas C Konopka

Defendant

No. 86-1-01741-7

Post-appeal
Judgment and Sentence
as to Count I

CERTIFIED COPY TO COUNTY JAIL JAN 26 1989

The Prosecuting Attorney with the above-named defendant and counsel
Molly Cohan came into court. The defendant was duly informed by the
Court of the nature of the amended information found against him for the
crime(s) of _____

Indecent Liberties

of his arraignment and plea of "Not guilty of the offense charged in the amended
information," of his trial and the verdict of the jury finding of the court on the
4th day of AUGUST, 1986, "guilty

OF THE CRIME OF INDECENT LIBERTIES

The defendant was then asked if he had any legal cause to show why judgment
should not be pronounced against him, to which he replied he had none.

And no sufficient cause being shown or appearing to the Court, the Court
renders its judgment: That whereas the said defendant has been duly convicted
by jury verdict in this Court, it is therefore,

ORDERED, ADJUDGED and DECREED that the said defendant is guilty of the
crime of _____

Indecent Liberties, contrary to
RCW 9A.44.100, as charged in
count I

and that he be sentenced to imprisonment in such penal institution or correctional
facility, under the jurisdiction and supervision of the Department of Corrections
pursuant to the provisions of RCW 72.13.120, for a maximum term of not more than

10 (ten)

years, with credit for time served prior to this date of 0 months/0 days,
and a minimum term to be fixed by the Board of Prison Terms and Paroles.

The Defendant shall pay the penalty assessment required by RCW 7.68.035
of \$~~70~~0.00 within twenty-four months from the date of this order.

The Defendant is hereby remanded to the custody of the Department of Adult
Detention to be by them detained until called for by the transportation officers
of the Department of Corrections, authorized to conduct him to the Washington
Corrections Center.

DONE IN OPEN COURT this 25 day of Jan., 1989.

Presented by:

[Signature]
Deputy Prosecuting Attorney

(Rev. 5/83)

[Signature]
JUDGE

[Signature]
MOLLY COHAN, PDA

POSTED

COPY TO SENTENCING GUIDELINES COMMISSION JAN 26 1989

**IN THE COURT OF APPEALS
DIVISION I
OF THE
STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

THOMAS C. KONOPKA,

Appellant.

No.19570-1-I.....

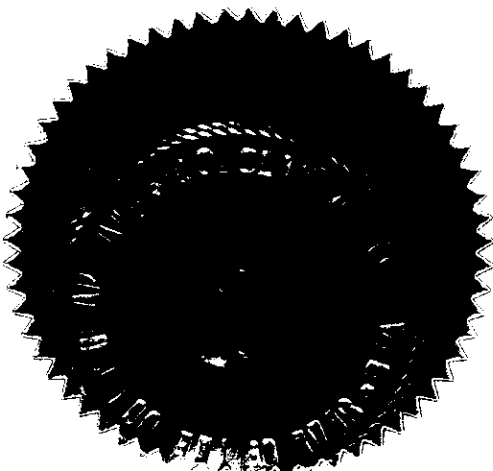
STATE OF WASHINGTON] ss.
County of King.]

I, RICHARD D. TAYLOR, Clerk of the Court of Appeals—Division I of the State of Wash-
ington, do hereby certify that the attached and foregoing is a full, true and correct copy of the

.....
..... OPINION
.....

and the whole thereof, as the same w.....as..... filed in the above entitled case on the.....5th.....
day of.....July....., 19..88., and now appear...s of record and on file in my
office.

IN TESTIMONY WHEREOF, I have hereunto set my hand
and affixed the seal of said court at Seattle,
this..23rd day ofNovember....., 19..88




RICHARD D. TAYLOR,

Clerk of the Court of Appeals—Division I, State of Washington.

19570-1-172

FILE
IN CLERKS OFFICE
COURT OF APPEALS
STATE OF WASHINGTON - DIVISION I
DATE JUL 05 1988
Swanson
CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	NO. 19570-1-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
THOMAS C. KONOPKA,)	
)	
Appellant.)	FILED <u>JUL 05 1988</u>

SWANSON, J. -- Thomas C. Konopka appeals his conviction on three counts of indecent liberties arising out of sexual contact with his stepdaughter. Konopka contends that the trial court erred in failing to properly instruct the jury on the requirement of unanimity.

Konopka's stepdaughter, J., testified at trial to various incidents of sexual contact that occurred between the ages of 4-1/2 and 11. She testified that prior to her entering the fifth grade in 1983, the appellant began to wrestle with her, touching her breasts and vaginal areas. These wrestling incidents occurred approximately two or three times per month. J. recalled one specific incident in November or December of 1983 which occurred in her mother's bed. Appellant began rubbing her private parts but stopped suddenly when he heard his wife approaching.

In February of 1984, J. testified that she climbed into her parents' bed and appellant exposed himself to her and then began rubbing her private parts.

A third incident of sexual abuse occurred in July of 1985. After J. had gone to bed, Konopka entered her room. He took off J.'s pajamas, took off his clothes and fondled her private parts. J. then testified that he "aligned his penis with my belly button and then ejaculated on me."

After that particular incident, and on several previous occasions during the years of 1983-85, Konopka would enter the bathroom while J. was bathing or enter her bedroom while she was dressing. He would grab her and push her against him sometimes causing her hand to touch his penis.

In August of 1985, J. told her friend, Sheni, that appellant had been sexually abusing her.

The State introduced exhibit 3, a summary J. wrote on hotel stationery shortly before trial. The summary referred to three specific incidents of sexual abuse.

Additional evidence was presented through testimony of witnesses. Jeanna, J.'s stepsister, testified that she frequently observed Konopka enter the bathroom when J. was in the tub. Appellant's wife testified that in 1983-84 there was wrestling between appellant and J. She also stated that there was one incident when she remembered leaving appellant and J. in bed together.

On June 20, 1986, Thomas Konopka was charged by amended information with three counts of indecent liberties against J. The criminal acts were alleged to have occurred during the following time periods: Count I, between January 1, 1983 and June 30, 1984; Count II, between July 1, 1984 and September 30, 1985; and Count III, between January 1, 1983 and June 30, 1984. On the first day of trial, the State successfully moved to amend the information to change the charging period for Count III to the time between July 1, 1984 and September 30, 1985.

UNANIMOUS JURY VERDICT

The primary issue in this case is whether jury instruction 5 denied appellant the right to a unanimous jury.¹ Konopka maintains that the unanimity instruction given was not properly worded and constituted reversible error.

Defense counsel did not propose a unanimity instruction nor did he request the State to elect which acts it would rely on for conviction. However, the State did propose a unanimity instruction which was given by the court. Instruction 5 read as follows:

Evidence has been introduced of multiple acts of sexual contact between [J.] and the defendant.

¹Appellant now concedes that the equal protection issue has been resolved against him by State v. Hodgson, 108 Wn.2d 662, 740 P.2d 848 (1987). Likewise, although we need not reach the issue in this case, appellant's assignment of error pertaining to the miscalculation of his offender score has been resolved in State v. Jones, 110 Wn.2d 74, ___ P.2d ___ (1988). Jones holds that current offenses sentenced concurrently count separately.

Although the 12 of you need not agree that all the acts have been proved, you must unanimously agree that at least one particular act as to each count charged has been proved beyond a reasonable doubt.

Defense counsel did not object or take exception to this instruction. Although the appellant argues for the first time on appeal that the instruction was inadequate to protect his constitutional right to a unanimous jury verdict, the issue of jury unanimity generally may be raised for the first time on appeal. State v. Kitchen, 46 Wn. App. 232, 730 P.2d 103 (1986). See also RAP 2.5(a)(3) (party may raise for the first time on appeal a "manifest error affecting a constitutional right").

When a defendant is charged with a single count of criminal behavior encompassing several distinct criminal acts, jury unanimity must be protected. State v. Petrich, 101 Wn.2d 566, 572, 683 P.2d 173 (1984). In order to protect the right to a unanimous verdict, the jury must be instructed that all jurors must agree that the same criminal act has been proved beyond a reasonable doubt when the evidence indicates that several distinct criminal acts have been committed, but the defendant is charged with only one count of criminal conduct. Petrich, supra at 572. Alternatively, the State may elect the act upon which it will rely for conviction. Petrich, supra.

Applying this rule protects against a conviction where some jurors relied on one incident and some another, and there is no unanimity on all elements necessary for a valid conviction.

State v. Handyside, 42 Wn. App. 412, 415, 711 P.2d 379 (1985).

Appellant alleges that the instruction given did not protect his right to a unanimous jury verdict. He insists that the instruction given could be read to mean that the jury could convict as long as each juror was convinced at least one of the acts was proved beyond a reasonable doubt, even if each juror was convinced as to a different act. Appellant maintains that it is impossible to know which incidents each juror used for each count since there were numerous incidents of sexual conduct mentioned at trial, and since the "to convict" instruction on Counts II and III were identical.

In State v. Noel, No. 19566-2-I (Wn. App., May 6, 1988) the identical instruction was given. The court found the language used in the instruction to be clear enough for the ordinary reasonable juror to understand that the jury must unanimously decide the same act has been proved beyond a reasonable doubt. The court stated:

In the operative clause, "you must unanimously agree that at least one particular act has been proved beyond a reasonable doubt", the subject is the plural you, meaning all of the jurors. The verb phrase requires unanimous agreement among them. Finally, the object of their agreement is that one particular act has been proved. The phrase one particular act, in conjunction with the plural you asks the jury as a whole to focus on a single act. Consequently, the ordinary reasonable juror would read the clause to mean the jury must unanimously decide the same act has been proved beyond a reasonable doubt. See State v. Stubsjoen, 48 Wn. App. 139, 151, 738 P.2d 306 (1987).

Noel, slip op. at 5.

We agree with the analysis in Noel, supra. It is controlling here. Therefore, the language of the unanimity instruction is adequate.

Counts II and III accused Konopka of the crime of indecent liberties, committed during the same time period.² The jury instructions "to convict" on each count were also identical.³

[J.] testified to one incident in July 1985 when appellant ejaculated on her. She testified that between 1983 and 1985, Konopka would come into her bedroom while she was half-dressed and make advances. He sometimes ordered her to get into his bed so that he could fondle her.

Because Counts II and III cover the same time period and the "to convict" instructions on each count are identical, and because testimony was presented of different acts of misconduct during the same time period, we cannot be sure that the jury used different acts to convict in Counts II and III. We therefore dismiss Count III.

Because of our dismissal of Count III thereby reducing the number of his current offenses and consequently his offender score, we remand for resentencing. See State v. Jones, 110 Wn.2d 74, ___ P.2d ___ (1988).

²Both counts alleged the crime to be committed as follows: That the defendant Thomas C. Konopka, in King County, Washington, during a period of time intervening between July 1, 1984 to September 30, 1985, did knowingly cause [J.], who was less than 14 years of age and not the spouse of the defendant, to have sexual contact with the defendant.

³The instruction set forth the same time period and the same general four elements of the crime.

We affirm the judgment as to Counts I and II, dismiss
Count III, and remand for resentencing.

Swanson, J.

WE CONCUR:

Culman, ACF

A majority of the panel having
determined that this opinion will not be
printed in the Washington Appellate
Reports but will be filed for public record
pursuant to RCW 2.06.040, IT IS SO
ORDERED.

Seabright, J.
CHIEF JUDGE

State v. Konopka, No. 19570-1-I

WINSOR, J. (Dissenting) -- For the reasons stated in my dissenting opinion in State v. Noel, 51 Wn. App. 436, 441-42, ___ P.2d ___ (1988), I dissent because instruction 5 was not adequate to protect defendant's right to a unanimous verdict. I believe a new trial should be mandated.

Winsor, J.

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

93 APR 21 PM 12:38

STATE OF WASHINGTON

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WASH

THOMAS G. KONOPKA,

Defendant)

Cause: 86-1-01741-7,
Count II, only

DOC: 922102

CERTIFICATE AND ORDER OF DISCHARGE

This matter having come on regularly before the above-entitled Court pursuant to RCW 9.94A.220, the Court having been notified by the Secretary of the Department of Corrections or his designee that the above-named defendant has completed the requirements of his/her sentence, and there appearing to be no reason why the defendant should not be discharged, and the Court having reviewed the records and file herein, and being fully advised in the premises, **NOW THEREFORE:**

IT IS HEREBY CERTIFIED that the defendant has completed the requirements of the sentence imposed.

IT IS HEREBY ORDERED that the defendant be **DISCHARGED** from the confinement and supervision of the Secretary of the Department of Corrections.

IT IS FURTHER ORDERED that the defendant's civil rights lost by operation of law upon conviction be **HEREBY RESTORED**.

DONE IN OPEN COURT this 16 day of April,
19 93.

F. Sullivan
Honorable FRANK L. SULLIVAN

PRESENTED BY: [Signature]
Deputy Prosecuting Attorney

Original: Court
cc: Prosecuting Attorney
Defense Attorney
Probationer
File

[Signature]
Dennis L. Roberts,
Community Corrections Officer III

CERTIFICATE AND ORDER OF DISCHARGE

[Handwritten initials]