

Judges order new trial in rape case

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VANCOUVER — A new trial has been ordered for Bert David Claflin, who was convicted of two counts of second-degree rape in 1981.

The Washington Court of Appeals remanded the case back to Clark County Superior Court Tuesday.

Claflin, 58, of La Center, was sentenced to 55 years in prison after being convicted of the rape charges as well as one count each of second-degree assault, third-degree statutory rape and tampering with a witness and five counts of indecent liberties. The original case was heard by Superior Court Judge Robert Harris.

Claflin was accused of assaulting five victims, ranging in age from 5 to 17, over a six-year period.

The three-judge panel heard the appeal in Vancouver in September. The panel's decision to reverse the

conviction was unanimous.

"I'm gratified that the court reversed. We did not feel Bert received a fair trial and neither did they," said Steven W. Thayer, Claflin's attorney.

The judges based their decision on the inappropriateness of the testimony of an expert witness and a portion of Deputy Prosecutor James W. Peters' closing argument.

In his summation, Peters read to the jury a poem written by an anonymous rape victim. Thayer objected before the poem was read and lodged a motion for a mistrial immediately afterward. Harris denied the motion.

The appellate judges ruled that though closing arguments can be wide-ranging, they must relate to the facts of the case. The poem did not.

"The argument has to be pertinent to matters on trial before the jury. If it contains matters outside the evidence it is irrelevant . . . and in this case

highly prejudicial," according to the decision written by Judge Edward P. Reed.

"A prosecutor should know that the notion of harmless error" does not permit him "to inject naked prejudice into any case," Judge Stanley W. Worwick wrote in a concurring opinion.

He wrote that he joined the majority reluctantly because the state had a strong case but one that had been damaged by the "misguided zeal" of the prosecutor.

The judges found that the testimony of a sexual abuse researcher also was irrelevant. The expert witness told the jury that children often delay reporting cases of molestation when the perpetrator is a "father figure."

The appellate judges found that the testimony did not specifically pertain to the Claflin case.

No date has been set for the retrial.