

Crime

Anti-rape group's flier libelous

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SANTA CRUZ — A jury found Thursday that Women Against Rape libeled a Scotts Valley man when it circulated a flier falsely accusing him of assaulting and attempting to rape a co-worker.

The seven-man, five-woman jury awarded 23-year-old Steve Carney \$7,500 for pain and suffering and \$25,000 in punitive damages.

It's doubtful that Carney will collect a dime, because a representative of Santa Cruz WAR testified during the trial that the group is \$500 in debt.

David Sabih, Carney's attorney, had maintained from the start that, although the suit asked for \$150,000, money was not the issue. He offered during the trial to pack up and leave if WAR would apologize and print a retraction.

"I feel a lot better, but I can't say I really won because there may be people out there who saw it (flier) and formed their own opinions," Carney said after hearing the verdict.

"I think it (the verdict) will teach them to be a little more careful about what accusations they choose to print about people," said Carney.

Jury Foreman Ken Fein said the jury wanted to send a message that "this is

not to be tolerated in our free society."

He said the jury found that the allegation was false by legal definition and that Women Against Rape acted with "reckless disregard" for Carney's rights by publishing one woman's accusation without any investigation.

"They (WAR) stated over and over again that the effect of the publication on Steve Carney was not considered. We found that to be wanton disregard for his rights," Fein said.

Fein said the jury wrestled with the question of pain-and-suffering damages. "We had no trouble putting ourselves in Steve Carney's place. We knew we'd all feel awful, but we had trouble assigning a monetary amount."

On the issue of punitive damages, the jury felt that associating someone's name to such crimes without investigation is "absolutely and by legal definition, despicable," Fein said.

Other jurors said WAR's refusal to retract was a big issue in the discussion of punitive damages.

Representatives of WAR continued to stand by their publication even after hearing the verdict.

"We have not agreed to retract because — as we testified — we still believe in the accuracy of the information published," said Deanne Pernel.

WAR has not printed another flier since the one in 1984 which said that Carney and a friend took co-worker Karen Winkler, 20, out after work on the false pretense of friendship and support, and then assaulted and attempted to rape her.

Winkler, now 24, did not testify at the trial, but depositions were read to the jury. Winkler said in those depositions that she did not know what happened on the night in question.

Winkler originally was named in the suit, but settled out of court with an apology for participating in the publishing of the flier.

Pernel and Jan Shirchild, both directors of WAR, said they would discuss an appeal with its lawyers.

One of those attorneys, Leslie Levy of Oakland, said she believed there were many grounds for an appeal, charging that visiting Judge Robert Staniforth from San Diego had made numerous errors in his decisions and instructions.

His refusal to allow testimony by a psychiatrist and a victims' advocate, she said, deprived them of the core of their case.

Representatives of WAR testified that they based their decision to print the charges against Carney solely on Winkler's word.

WAR hoped to call the psychiatrist

and advocate to bolster its contention that WAR volunteers were acting in good faith when they interpreted Winkler's emotional distress as corroboration that she had been sexually assaulted.

But Staniforth refused to allow the expert testimony, saying that neither the psychiatrist nor advocate had interviewed Winkler.

And, he said the law dictates that jurors should be the judge of what Winkler's emotions showed or did not show.

In order to determine libel, the jury had to find that the accusation of assault and attempted rape was false and that WAR acted with malice in printing it.

Levy said another judge had ruled before the trial that malice was to be judged only on the issue of WAR's ill will or hatred toward Carney. "He (Staniforth) changed the rules in the middle of the trial," she said.

WAR representatives took heart that while the jury found WAR had libeled Carney, the jury did not feel his privacy had been violated.

"I'm real glad about that. Our opinion has always been that a woman's right to information overrides an individual's right to privacy," said Shirchild.