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SUPREME COURT
STATE OF WASHINGTON
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NO. 92096-6

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

AMOS K. GYAU,

Petitioner.

ANSWER TO
PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. STATEMENT OF THE CASE

On September 23, 2011, aid personnel were summoned to a house in Lynnwood. They found Y.P. "very upset and crying and hyperventilating." They believed that she was experiencing a panic attack. Their efforts to calm her were, however, unsuccessful. They moved her outside to their medic unit. When she was away from the defendant, she told them that the defendant had made her have sex with him. 4 Trial RP 535-37, 555-59.

At trial, Y.P. testified that she had been raped by the defendant (petitioner), Amos Gyau. She had met him at the Edmonds Community College gym, where they were both students. Apart from a brief meeting at the gym two days before, they did not know each other. The defendant took her to the house on the pretext of loaning her a book. There, he pushed her onto a bed, pulled her underwear aside, and had vaginal intercourse with her. 1 Trial RP 63-101.

The defendant testified that he did not have sexual intercourse with Y.P: at that location. He claimed that he had

intercourse with her earlier that day, in the restroom of a nearby library. 4 Trial RP 588-634.

The defendant waived jury trial. 1 CP 88. In closing argument, defense counsel argued that Y.P. was not reliable and there had been no rape. The argument did not refer to consent as a "defense." 6 Trial RP 798-847. In the court's oral opinion, it pointed out that an act of sexual intercourse had been "essentially conceded." The "main issue" was "whether this took place by an act of forcible compulsion." 6 Trial RP 862-63. After a lengthy review of the evidence, the court concluded:

Looking at everything, it is clear to me that the testimony of [Y.P.] is credible, and I find that beyond a reasonable doubt. And I find beyond a reasonable doubt that the testimony of Amos Gyau is not credible and is not corroborated. Therefore, I find that forcible compulsion was used. I do find that [Y.P.] was raped. And I find beyond a reasonable doubt that Amos Gyau raped her and that the conviction will stand of rape in the second degree.

6 Trial RP 882. The oral opinion did not mention any other burden of proof or refer to any "defense" of consent.

The court entered detailed written findings consistent with its oral ruling. 1 CP 1-6. These findings included the following:

54. On September 23, 2011, the defendant physically forced Y.P. ... to have sexual intercourse with him,

against her will, by forcible compulsion, in the State of Washington, City of Lynnwood.

1 CP 5.

The defendant appealed from the judgment and sentence. The Court of Appeals affirmed. The current petition seeks review of that decision. In a separate decision, the Court of Appeals affirmed the denial of a new trial. A petition for review of that decision is pending under cause no. 92094-0.

III. ARGUMENT

IN FINDING FORCIBLE COMPULSION PROVED BEYOND A REASONABLE DOUBT, THE TRIAL COURT ALSO FOUND THAT CONSENT WAS DISPROVED.

The petitioner claims that the Court of Appeals decision conflicts with State v. W.R., 181 Wn.2d 757, 336 P.3d 1134 (2014). There, this court held that the “defense” of consent negates an element of second degree rape. Consequently, the State bears the burden of disproving consent. The court said, however, that juries need not be specifically instructed on consent:

Because the focus is on forcible compulsion, jury instructions need only require the State to prove the elements of the crime. It is not necessary to add a new instruction on consent simply because evidence of consent is produced.

Id. at 757 n. 3.

In the present case, the trial court never addressed any "defense" of consent, because no such "defense" was raised. Rather, the court addressed the element of forcible compulsion, finding it proved beyond a reasonable doubt. 6 Trial RP 882. In finding forcible compulsion, the court found that the defendant forced the victim to have sexual intercourse with him "against her will." 1 CP 5, finding no. 54. No error has been assigned to that finding, so it is an established fact. Seattle v. Evans, 75 Wn.2d 225, 228, 450 P.2d 176 (1969). Since the intercourse was against the victim's will, it was without her consent.

The written findings did not specify the standard of proof used by the court in making any of the findings, including this one. As the Court of Appeals noted, a court's oral ruling may be used to interpret its written findings. State v. B.J.S., 140 Wn. App. 91, 99 ¶ 20, 169 P.3d 34 (2007). The oral ruling makes it clear that the trial court's findings were based on proof beyond a reasonable doubt.

Nothing in the record suggests that the trial court had any confusion about the standard of proof. The court found that forcible compulsion was proved beyond a reasonable doubt. In so finding, the court rejected the defendant's claim of consent. The Court of

Appeals holding is consistent with W.R. There is no reason for further review.

IV. CONCLUSION

The petition for review should be denied.

Respectfully submitted on September 1, 2015.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: *Seth A Fine*
SETH A. FINE, WSBA # 10937
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Attorney for Respondent

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON
DIVISION I

THE STATE OF WASHINGTON,

Respondent,

v.

AMOS K. GYAU,

Petitioner.

No. 92096-6

DECLARATION OF DOCUMENT
FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:


The undersigned certifies that on the 2nd day of September, 2015, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

ANSWER TO PETITION FOR REVIEW

I certify that I sent via e-mail a copy of the foregoing document to: The Supreme Court via Electronic Filing and Ms. Suzanne Lee Elliott, Attorney at Law, suzanne-elliott@msn.com

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 2nd day of September, 2015, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office

OFFICE RECEPTIONIST, CLERK

To: Kremenich, Diane; suzanne-elliott@msn.com
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Good Morning...

RE: State v. Amos K. Gyau
Supreme Court No. 92096-6

Please accept the attached for filing: State's Answer to Petition for Review


Thanks.

Diane.

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