

No. 71013-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,  
Plaintiff-Respondent,

v.

AMOS GYAU,  
Defendant-Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Richard T. Okrent, Judge

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APPELLANT'S REPLY BRIEF

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**Suzanne Lee Elliott**  
Attorney for Appellant  
1300 Hoge Building  
705 Second Avenue  
Seattle, WA 98104  
(206) 623-0291

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## I. REPLY ARGUMENT

In this brief, Gyau replies to only some of the State's arguments. This does not mean that Gyau agrees with the State's arguments on the issues he does not address in this reply. Rather, Gyau believes that no reply is required because the State's arguments are not persuasive.

### A. THE TRIAL COURT'S FAILURE TO EXPRESSLY FIND LACK OF CONSENT BEYOND A REASONABLE DOUBT REQUIRES REVERSAL

In this case, the trial court found that the sexual conduct was non-consensual, but did not specify the standard of proof. As the prosecutor points out, this was the central issue in the case. The State argues that this failure can be corrected by reference to the court's oral ruling "to interpret the written findings." Brief of Respondent at 11. Those findings reveal that the Court addressed "lack of consent," but failed to state that the State bore the burden of disproving consent beyond a reasonable doubt.

Contrary to the State's assessment of the record, this case is analogous to *State v. W.R., Jr.*, 181 Wn.2d 757, 336 P.3d 1134 (2014). Like W.R., Gyau's testimony was that the sexual contact was consensual. The trial court judge mentions that he is rejecting any claim of consensual sex repeatedly in his oral findings. RP 872-73, 874. He explains that he understands that Gyau is asserting that he and the victim


had consensual sex. RP 877-79. But he never states that the State proved lack of consent beyond a reasonable doubt.

## II. CONCLUSION

For the reasons stated above, this Court must reverse Gyau's conviction and remand for a new trial.

DATED this 1st day of May, 2015.

Respectfully submitted,

  
Suzanne Lee Elliott, WSBA #12634  
Attorney for Amos Gyau

**CERTIFICATE OF SERVICE**

I hereby certify that on the date listed below, I served by First Class United States Mail, postage prepaid, one copy of this brief on the following:

Snohomish County Prosecutor's Office  
Appellate Division  
3000 Rockefeller Avenue, M-S 504  
Everett, WA 98201

Mr. Amos Gyau #368699  
Washington State Penitentiary  
1313 North 13<sup>th</sup> Avenue  
Walla Walla, WA 99362

MAY 1, 2015  
Date

Christina Alburas  
Christina Alburas

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