No. 71013-3-I

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

STATE OF WASHINGTON, Plaintiff-Respondent,

v.

AMOS GYAU, Defendant-Appellant.

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

The Honorable Richard T. Okrent, Judge

APPELLANT'S REPLY BRIEF

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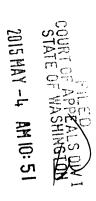


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I. REPLY ARGUMENT

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,

Suzagne 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:

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MA4 1, 2015
Date