71013-3

71013-3

NO. 71013-3-I

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

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STATE OF WASHINGTON,

Respondent,

v.

AMOS K. GYAU,

Appellant.



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# BRIEF OF RESPONDENT

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## I. ISSUES

(1) The trial court found that the defendant had sexual intercourse with the victim against her will by forcible compulsion. The court's oral decision indicates that these facts were proved beyond a reasonable doubt. Did the court enter adequate findings with regard to the victim's consent?

(2) The trial court entered a finding that the victim's suicide attempt and psychological problems corroborated her claim of a traumatic rape. Other findings fully support the court's conclusion that the defendant was guilty of second degree rape. Should this finding be reviewed?

(3) If the finding is subject to review, could the trial judge reasonably infer that the victim's psychological problems were connected to the rape that the defendant had committed?

(4) Should a challenge to the court's decision to decline jurisdiction be reviewed, where the defendant reached the age of 18 before trial?

(5) If the challenge is considered, did the trial court abuse its discretion in declining juvenile jurisdiction?

## II. STATEMENT OF THE CASE

### A. STATE'S EVIDENCE.

On September 23, 2011, Y.P was an international student attending Edmonds Community College. On that day, she encountered the defendant, Amos Gyau, at the college gym. The defendant was also a student at the college. They had met briefly at the gym two days before. Apart from that, they did not know each other. 1 Trial RP 63-64.

In talking to the defendant, Y.P. mentioned that she needed a "driving book" so she could get a driver's license. The defendant said that he had the book. He suggested that they go to the mall and look at some books. After that, he would loan her his book. 1 Trial RP 65-68.

Y.P. rode a bus with the defendant. They got off by a "big building," which she thought was the mall. After walking for about 15 minutes, they arrived at a house. The defendant said that he would go in and grab the book. Some people let them in. Y.P said that she was hungry, so the defendant gave her some food. There was an argument between the defendant and the people in the house. 1 Trial RP 68-76.

The defendant asked Y.P. to come upstairs and get the book. When she came up, she saw the defendant wearing a bathrobe. She tried to leave, but the defendant grabbed her arm and pushed her into a room. He pushed her onto a bed. He held her wrists over her head with one hand, while he touched her body with the other hand. When she yelled, he beat her arms. He pulled her underwear aside and had vaginal intercourse with her. 1 Trial RP 76-87.

Y.P.'s breathing became very rapid. She told him that she had asthma and needed her inhaler, which was in her bag downstairs. This was a pretext to give her a chance to escape. The defendant, however, told her that she was lying. He pushed her onto the bed and had intercourse with her again. 1 Trial RP 88-95

Y.P. pretended to pass out. He pounded her chest very hard. She could not endure the pain, so she stopped pretending to be unconscious. She said that she needed her medication. He carried her downstairs. She begged him to call 911, promising that she wouldn't tell anyone what he had done. He finally agreed. 1 Trial RP 95-101.

Aid personnel arrived from a nearby fire station. They found Y.P. "very upset and crying and hyperventilating." Her clothes were

slightly disheveled. She was experiencing carpopedal spasms. These are spasms of the hands and feet, which are associated with hyperventilation. Aid personnel 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. They reported this to police. 4 Trial RP 535-37, 555-59.

Lynnwood Police Officer Cole Langdon arrived and questioned the defendant. He said that Y.P. was his girlfriend. They had been dating for two weeks. They had been "making out" on the couch. During the course of this, he had put his finger in her vagina. He denied having any other kind of sex with her that day. 2 Trial RP 202-08.

Following his arrest, the defendant was questioned by Dets. Jacqueline Arnett and Rodney Cohnheim. The defendant continued to claim that he had been dating Y.P. for two weeks. At first, he claimed that he did not have sexual intercourse with her. He then changed his story, claiming that they had intercourse in the restroom of the Lynnwood Library. 2 Trial RP 274-76.

On September 26, Sheryl Copeland met with Y.P. Ms. Copeland was the Director of the Counseling Center at Edmonds Community College. Y.P. looked disheveled. She had not showered. She said that she was not eating or sleeping. Ms. Copeland got Y.P. to drink some tea. She offered food, but Y.P. wouldn't take it. 3 Trial RP 382-83.

On November 1, Y.P. was admitted to Swedish-Edmonds Hospital following a suicide attempt. She remained in the hospital for eight days. 3 Trial RP 346-348. While there, she was examined by a psychiatrist, Dr. Christopher Wilson. He testified that her symptoms appeared consistent with an acute post-traumatic stress reaction. She was having intrusive flashbacks or intrusive memories. She made statements about seeing faces of an assailant and being very overwhelmed. She also displayed panic symptoms, including sweating, quivering voice, and rapid heartbeat. 3 Trial RP 360.

Police later received information that Y.P. had reported other assaults. On December 3, Det. Arnett interviewed her concerning those possible incidents. Y.P. said that she had been approached from behind by an assailant, who put something like chloroform over her face. 3 RP 463; ex. 57. Det. Arnett testified that Y.P.'s

demeanor was very different than in a previous interview, when she had described the rape committed by the defendant. This time, she seemed very confused and vague, and she provided very little description. 3 RP 446-47.

At trial, Y.P. remembered almost nothing about the later alleged assault. 2 Trial RP 154-60. She did not know whether that assault had actually happened. She was certain, however, that the rape by the defendant did happen. 2 Trial RP 174-76.

**B. DEFENSE EVIDENCE.**

The defendant testified that he had met Y.P. three times before September 23. On direct examination, he said that they had talked briefly on those occasions. 4 Trial RP 588-91. On cross-examination, he said that he had sex with her at a friend's house. 5 Trial RP 712.

On September 23, the defendant encountered Y.P. at the Edmonds Community College gym. They agreed to "hang out." They got on a bus together and went to the Lynnwood Library. There, they went into the men's restroom together and had sex. 4 Trial RP 591-99.

The defendant's brother had previously told the defendant that he needed to talk to him. 4 Trial RP 592. The defendant

believed that his brother was angry. He wanted someone with him during this encounter. The defendant therefore walked with Y.P to his brother's house. He went upstairs with the brother, who explained why he was angry. The defendant then went back downstairs to Y.P. The brother and his girlfriend left around 15 minutes later. 4 Trial RP 611-12.

The defendant and Y.P. began kissing and fondling each other. They ate and then later resumed kissing. Y.P. started to "breathe and shake a little bit." She said, "I need this." The defendant thought that she wanted him to use deodorant. He sprayed himself with deodorant, but her reaction continued to increase. Finally he became concerned enough to call 911. 4 Trial RP 613-34.

The defendant admitted that he had given false information to the aid personnel and police. He said that they were boyfriend and girlfriend, but that was not true. He also denied having sex with her, which was likewise not true. 5 Trial RP 709-11.

**C. DECLINE HEARING.**

The defendant was charged as a juvenile with second degree rape. The court held a decline hearing. The parties submitted police reports, a report from juvenile probation, and a

forensic psychological evaluation. No further evidence was offered. 1/18 RP 4.

According to the psychological evaluation, the defendant was born in Ghana. In 2004, his father moved to the United States. The defendant was then placed in boarding/military school. He remained there until 2009, when he moved to the United States. Decline hg. ex. 3 at 2.

In boarding school, the defendant belonged to a "crew," which is akin to a gang in the United States. As part of that group, he frequently got into fights and engaged in illegal activities for money. Decline hg. ex. 3 at 3-5.

In the United States, the defendant attended Lynnwood High School. He was expelled for sexual harassment of a fellow student and for threatening to kill a school professional. Prior to his expulsion, he had been suspended on different occasions for fighting and for sexual harassment. Decline hg. ex. 3 at 4.

The court decided to decline juvenile jurisdiction. It entered detailed findings of fact and conclusions of law explaining the basis for this decision. 2 CP 95-100. These findings are attached to this brief as Appendix A.

**D. BENCH TRIAL.**

The defendant waived jury trial. 1 CP 88. The court heard testimony as outlined above. Defense counsel argued that Y.P. was not reliable and that there had been no rape. 6 Trial RP 798-847.

In its oral ruling, the court summarized the elements of second degree rape. The court noted that it was "essentially conceded" that the defendant and the victim had engaged in an act of sexual intercourse on the relevant date. Consequently, the "main issue" was whether this took place by 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 court entered detailed written findings consistent with its oral ruling. 1 CP 1-6. These findings are attached to this brief as Appendix B.

## III. ARGUMENT

### A. THE TRIAL COURT PROPERLY REQUIRED THE STATE TO PROVE FORCIBLE COMPULSION, WHICH INCLUDED PROOF THAT THE VICTIM DID NOT CONSENT.

The defendant claims that the trial court was required to enter a specific finding concerning lack of consent. Analysis of this issue has been significantly altered by a case decided since the appellant's brief was filed: State v. W.R., ___ Wn.2d ___, 336 P.3d 1134 (2014). That case holds that "consent necessarily negates forcible compulsion. For this reason, due process prohibits shifting the burden to the defendant to prove consent by a preponderance of the evidence." Id. ¶ 20. In dicta, the court said 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. ¶ 19 n. 3. By the same reasoning, an express finding of lack of consent should not be necessary in a bench trial. If the court finds that there was forcible compulsion, it has necessarily found that there was no consent.

In the present case, however, the trial court did expressly find *both* forcible compulsion *and* lack of consent. The court entered the following findings:

> 22. The defendant then moved Y.P.'s underwear to one side, inserted his penis into her vagina, and proceeded to have sexual intercourse with Y.P. *while she continued to object verbally and try to squirm away from him.*
>
> ...
>
> 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 3, 5 (emphasis added). Since no error has been assigned to either of these findings, they are the established facts of the case. Seattle v. Evans, 75 Wn.2d 225, 228, 450 P.2d 176 (1969).

The written findings do not specify the standard of proof used by the court in making *any* of the findings. This court may, however, look to the oral ruling to interpret the written findings. State v. Hescock, 98 Wn. App. 600, 606, 989 P.2d 1251 (1999). The trial court specifically stated that all elements needed to be proved beyond a reasonable doubt. 6 Trial RP 862. The court pointed out that an act of sexual intercourse was "essentially conceded." Accordingly, the "main issue" was whether this took place by forcible compulsion. 6 Trial RP 862-63. After reviewing the

facts in detail, the court concluded that forcible compulsion had been proved beyond a reasonable doubt. The court specifically found that the victim's testimony was credible beyond a reasonable doubt. 6 Trial RP 882. It is thus clear that the all of the court's findings reflected a standard of proof beyond a reasonable doubt.

This case is very different from W.R. There, the trial court found that the defendant had "failed to prove the defense of consent by a preponderance of the evidence." W.R., ¶ 4. At trial, "[t]he defense and prosecution both relied on an incorrect understanding of the law when they fashioned and presented their arguments surrounding consent." Id. ¶ 28. In the present case, in contrast, there was no argument concerning any "defense" of consent. The sole disputed issue was whether there was forcible compulsion. The trial court recognized that the State had the burden of proving that fact beyond a reasonable doubt. At no point did the court apply any different standard of proof. The court properly found that all elements of the crime had been proved beyond a reasonable doubt.

## B. THE TRIAL COURT PROPERLY CONSIDERED EVIDENCE OF TRAUMA SUFFERED BY THE VICTIM IN ASSESSING HER CREDIBILITY.

### 1. This Court Need Not Consider The Defendant's Challenge To A Factual Finding That Is Unnecessary To Support The Trial Court's Conclusions Of Law.

The defendant appears to challenge Finding of Fact 50:[1]

> The court finds that Y.P.'s subsequent suicide attempt and psychological problems corroborate Y.P.'s claim of a traumatic rape and do not negatively impact her credibility. Y.P. appeared to suffer from post traumatic stress disorder as a result of being raped by the defendant.

CP 5.

In reviewing a conviction at a bench trial, this court will determine whether (1) substantial evidence supports the findings of fact and (2) the findings of fact support the conclusions of law. State v. Stevenson, 128 Wn. App. 179, 193, 114 P.3d 699, 706 (2005). Here, the key conclusion of law – that the defendant is guilty of second degree rape -- is fully supported by findings that the defendant has not challenged. In particular, the court found that "the defendant physically forced Y.P. ... to have sexual intercourse with him, against her will, by forcible compulsion." CP 5, Finding no.

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[1] The defendant's assignment of error refers to findings 49 and. 50. Brief of Appellant at 1, Assignment of Error 2. In the argument section of his brief, he refers to Finding of Fact 48. Brief of Appellant at 50. The language that he quotes, however, appears in Finding no. 50.

54. As already pointed out, this unchallenged finding is now an established fact. Evans, 75 Wn.2d at 228. As a matter of law, sexual intercourse committed against a person's will by forcible compulsion constitutes second degree rape. RCW 9A.44.050(1)(a). Consequently, this finding by itself compels the conclusion that the defendant is guilty as charged.

As a result, Finding 48 makes no difference to the outcome of this case, Even if this court struck that finding as unsupported, Finding 54 would still establish that the defendant is guilty. Since Finding 48 is superfluous, it need not be reviewed.

**2. The Trial Court's Finding Is Supported By Reasonable Inferences From Testimony Concerning The Victim's Trauma.**

In any event, Finding 48 is supported by substantial evidence. "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth." Stevenson, 128 Wn. App. at 193. Here, the finding is supported by the following evidence:

1. A few days after the rape, the victim reported that she was "terrified" about the defendant's imminent release from jail. She said that she was not eating or sleeping. A counselor reported that she appeared disheveled. 3 Trial RP 382-83.

2. A month later, she was admitted to a hospital following a suicide attempt. 3 Trial RP 346-47.

3. While in the hospital, she sometimes woke up at night saying that she could see the face of her attacker. 3 Trial RP 350.

4. While in the hospital, she exhibited symptoms consistent with an acute posttraumatic stress reaction. 3 Trial RP 359-60.

These facts support a reasonable inference that the trauma symptoms experienced by the victim were related to the traumatic experience she had recently experienced – being raped. The evidence therefore supports the trial court's findings.

The defendant correctly points out that *expert* testimony on "rape trauma syndrome" is inadmissible. This is because such testimony from an expert "creat[es] an aura of special reliability and trustworthiness." State v. Black, 109 Wn.2d 336, 349, 745 P.2d 12 (1987). This does not, however, preclude the trier of fact from drawing inferences from a rape victim's trauma:

> We do not imply, of course, that evidence of emotional or psychological trauma suffered by a complainant after an alleged rape is inadmissible in a rape prosecution. The State is free to offer lay testimony on these matters, and the jury is free to evaluate it as it would any other evidence.

Id. That is exactly what occurred in this case. The State offered testimony concerning the victim's psychological trauma, which was admitted without objection. The court, as fact finder, considered this evidence in assessing the victim's credibility. Such use of this evidence was proper.

## C. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DECLINING JUVENILE JURISDICTION.

### 1. Regardless Of The Outcome Of The Decline Hearing, The Juvenile Court Lost Jurisdiction When The Defendant Reached The Age Of 18.

Finally, the defendant argues that the trial court abused its discretion in declining juvenile jurisdiction. This issue is moot. Although the defendant was 17 years old at the time of the decline hearing, he was 19 by the time trial began. "Jurisdiction in the juvenile court ends when the youth becomes 18, unless jurisdiction has been extended. . ." State v. Calderon, 102 Wn.2d 348, 352, 684 P.2d 1293 (1984). Since there was no extension of jurisdiction here, juvenile jurisdiction terminated long before the defendant was tried.

If any error occurred in the decline proceedings, the situation in this case would be analogous to that in State v. Brewster, 75 Wn.2d 137, 449 P.2d 685 (1969). There, the juvenile court declined jurisdiction without any hearing at all. Following his 18th birthday,

the defendant was tried as an adult and convicted. The Supreme Court held that the adult court acquired jurisdiction when the defendant reached the age of 18. Consequently, the absence of a hearing in juvenile court did not result in any prejudice.

Similarly in the present case, the adult court acquired jurisdiction on the defendant's 18th birthday. Even if the result of the decline hearing was erroneous, this would not affect the jurisdiction of the adult court. Since any error in the decline hearing could not affect the outcome of the case, the defendant's challenge to that hearing should not be considered.

**2. If The Issue Is Considered, The Trial Court Properly Considered All Relevant Factors In Exercising Its Discretion To Decline Jurisdiction.**

If the challenge to the decline decision is considered, this court should hold that the trial court's action was proper. In deciding whether to decline juvenile jurisdiction, the trial court should consider the eight Kent factors. State v. Holland, 96 Wn.2d 507, 515, 656 P.2d 1056 (1983); see Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966). Here, the court carefully reviewed those factors and entered detailed findings concerning each one. 2 CP 95-100 (App. A.)

The defendant criticizes several aspects of the trial court's findings. First, he claims that the court erred in finding that he had more sophistication and maturity than other juveniles his age. 2 CP 98, Finding 1.14. This conclusion is supported by the Forensic Psychological Evaluation. The psychologist analyzed "sophistication and maturity" under three "domains:" autonomy, cognitive capacities, and emotional maturity. He concluded that the defendant possess a high level of autonomy, a high level of cognitive capacity, and a moderate-to-high level of emotional maturity. Viewing these areas together, the psychologist concluded that the defendant possessed a high level of sophistication and maturity. "Stated otherwise, he is more sophisticated and mature as one might expect at age 17." Decline hg. ex. 3 at 8-9. This expert opinion provides substantial evidence to support the trial court's finding.

Second, the defendant claims that the probation officer "completely misunderstood Gyau's adult sentencing consequences." He argues that the probation officer's report failed to reflect the possibility of incarceration beyond the standard range. Brief of Appellant at 24. Contrary to this claim, the report describes the adult standard range as "78 to 102 months (6.5 to 8.5 years) to

a maximum of life." 2 CP 107. More importantly, the *court* knew the correct sentencing consequences. At the commencement of the decline hearing, the prosecutor stated on the record that the defendant would face an indeterminate sentence up to life. 1/18 RP 11. Any misunderstanding by the probation officer had no effect on the court's decision.

The defendant's brief provides statistics purporting to show the likelihood that offenders under indeterminate sentence will be released at their first opportunity. Since this information was not included in the record, it should not be considered on appeal. See State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). A motion to strike these improper materials is unnecessary. Engstrom v. Goodman, 166 Wn. App. 905, 909 n. 2, 271 P.3d 959 (2012), review denied, 175 Wn.2d 1004 (2012). In any event, these statistics are irrelevant. The court was aware that the defendant *could* be incarcerated beyond the standard term. Whether this *would* occur is a matter of speculation that has little if any bearing on the Kent factors.

The defendant suggests that the decline may have led to a sentence that violated "the spirit, if not the letter," of Miller v. Alabama, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

That case holds it unconstitutional to impose mandatory sentence of life *without possibility of parole* for crimes committed when a person was a juvenile. Id. at 2469. Since the sentence imposed here provides for parole, Miller is irrelevant.

The defendant does point out one error in the probation report. The report says that "[i]n both [juvenile and adult] systems, ultimately a responsible offender may earn the ability of relief of registration by living a responsible life." 2 CP 107. In fact, absent executive clemency, a defendant cannot under current law obtain relief from registration requirements following conviction as an adult of second degree rape. RCW 9A.44.142(2)(a)(ii).

There is no reason, however, to believe that the court shared this misunderstanding of the law. Nor does it have any relevance to the court's finding concerning the applicable Kent factor. With regard to protection of the public and the likelihood of rehabilitation, the court found:

> If the respondent remained in the juvenile system, the system would have just a little over 3 years to attempt to rehabilitate the respondent. After the respondent turned 21, he would no longer be supervised. On the other hand, the adult system offers the possibility of a lifetime of community supervision upon conviction, as well as a longer period of incarceration during which the respondent could receive treatment if he were amenable.

2 CP 99, Finding 1.16. All of these factual statements are correct. A minor error of law by the *probation officer* does not equate to an abuse of discretion by the *court*.

Finally, the defendant criticizes the court for failing to consider the possibility that the defendant will be deported on release. As he acknowledges, this issue was not raised until the sentencing hearing. 6 RP 892-93. At the decline hearing, the court was given no information concerning possible immigration consequences. The court did not even know whether the defendant was a citizen. It only knew that he was born in Ghana. That, however, would not prevent him from being a citizen if either of his parents was a citizen. See 8 U.S.C. § 1401(c), (g) (citizenship of child born outside the U.S. to one or more parents who are U.S. citizens), § 1431 (citizenship of child who resides within the U.S. with one or more parents who is a U.S. citizen). The record at the decline hearing contained no information concerning the citizenship of the defendant's parents. Essentially, the defendant is criticizing the trial court for failing to speculate about matters outside the record. The court's decision to decline jurisdiction was not an abuse of discretion.

## IV. CONCLUSION

The judgment and sentence should be affirmed.

Respectfully submitted on February 2, 2015.

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By: 

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH
JUVENILE DIVISION

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|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br><br>vs.<br><br>GYAU, AMOS K.,<br>04/24/1994<br>Respondent. | 11-8-01268-9<br><br>COURT'S FINDINGS AND CONCLUSIONS ON DECLINE OF JURISDICTION |

THIS MATTER having come before the undersigned Judge to determine whether the Juvenile Division of this Court should retain jurisdiction over the Respondent or decline jurisdiction in favor of adult criminal court prosecution; a hearing having been held January 18, 2012; the Respondent being seventeen years old at the time of the hearing and being charged with Rape in the Second Degree; and the Court having considered the evidence presented, including exhibits admitted and testimony presented, as well as the arguments and memoranda of counsel, being fully advised, the court now enters the following findings of fact and conclusions of law:



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APPENDIX A

## I. FINDINGS OF FACT

1.1) Amos Gyau was 17 years old at the time of the alleged crime and throughout the course of this decline hearing. His date of birth is April 24, 1994. He will be 18 on April 24, 2012.

1.2) There is probable cause to believe that the respondent attacked and raped a woman who was far smaller than the respondent and whom he had lured to a place where she could not get help. When she resisted, the Respondent held her against her will and put his hand over her mouth, restricting her breathing. It appears that the respondent went to a lot of trouble and planning to lure the victim to a home owned by Respondent's cousin where he would be able to carry out the attack.

1.3) The evidence indicates that the victim repeatedly faked a medical condition, pretending to lose consciousness until the respondent called 911. The respondent begged her not to tell and told her to tell the medics he was her boyfriend.

1.4) The victim is an exchange student from China who had been in this Country for less than two weeks at the time of the alleged Rape. She spoke little English at the time.

1.5) The Respondent made numerous inconsistent statements to medics and the police. He also made statements that can be refuted by independent evidence.

1.6) The Respondent is charged with a class A felony and a violent offense and is very serious.

1.7) The Respondent completed a diversion on a Theft 3 (DOV6/17/2010) in November of 2010. On December 13, 2010, the Respondent was charged with Fourth



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Degree Assault for assaulting a female student at the bus stop on November 17, 2009. School staff at that time notified deputies that the Respondent had previously been suspended for 5 days for assaulting the same female at school. The Respondent completed diversion on this case and it was ultimately dismissed on April 27, 2011.

1.8) At the time of the present offense, the Respondent was on Personal Recognizance for a charge of Harassment. The allegation in that case is that on April 27, 2011, the Respondent was being suspended from Lynnwood High school for 30 days after sexually harassing a female student. As the Respondent was leaving Student Behavior Coordinator Stephen Miranda's office, the Respondent asked Miranda if he had a family and then said, "You had better pray tonight that you stay alive." Miranda believed that the Respondent was threatening his life and believed the respondent was unstable enough to carry out that threat.

1.9) Kent factor number one is the seriousness of the offense and protection of the community. The charge in this case is Second Degree Rape. The facts and circumstances of the allegations in this case weigh against retaining jurisdiction and weighs in favor of declining jurisdiction.

1.10) The second Kent factor is the aggressiveness, violence, premeditation, and willfulness of the criminal acts. The facts of this case establish that the act was aggressively and violently committed, premeditated, and obviously willful. This factor weighs against retention and in favor of declining jurisdiction.

1.11) The third Kent factor is whether the offense was against a person or property. This was an offense against a person. That being the case, this factor,



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beyond a reasonable doubt, weighs against retaining jurisdiction and in favor of declining jurisdiction.

1.12) The fourth Kent factor is the merit of the complaint. The complaint clearly has merit, the court has found probable cause to believe the crime of Second Degree Rape has occurred. From a trial perspective, the merit of the case is still fairly high based on the circumstances of the report and the statements of the Respondent. This factor is fairly neutral, but weighs slightly in favor of declining jurisdiction.

1.13) The fifth Kent factor is the desirability of trial and disposition in one court when the Respondent's alleged co-conspirators are adults. There are no co-defendants or co-respondents in this case so this factor does not weigh one way or the other.

1.14) The sixth Kent factor is the Respondent's sophistication and maturity. The respondent was 17 ½ years old when this offense occurred. He is now almost 18 years old. Based on the evidence presented, including Dr. O'Neal's report, the Probation report submitted by Aiko Barkdoll, and the reports submitted regarding this case, Respondent is more sophisticated and mature than other Juveniles his age. The Respondent possesses a high level of autonomy, has a high level of cognitive capacity, a moderate-to-high level of emotional maturity, and a high level of sophistication and maturity. This factor weighs in favor of the juvenile court declining jurisdiction.

1.15) The seventh Kent factor is criminal history. The respondent does have some history that the court has considered (see paragraphs 1.7 and 1.8). This history is somewhat concerning, but has not yet resulted in conviction. On the whole, this factor weighs in favor of retaining juvenile jurisdiction.



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1.16) The eighth Kent factor is the prospect of adequate protection of the public and the likelihood of reasonable rehabilitation of the Respondent. The Court finds, based on the evidence presented and the report of Dr. O'Neal and probation, that the Respondent is a high risk for future violent behavior. The Respondent exhibits a moderate-to-high level of violent and aggressive tendencies, a moderate level of planned and extensive criminality, and a high level of callous-unemotional traits. The Respondent shows a moderate amenability to treatment. If the respondent remained in the juvenile system, the system would have just a little over 3 years to attempt to rehabilitate the respondent. After the respondent turned 21, he would no longer be supervised. On the other hand, the adult system offers the possibility of a lifetime of community supervision upon conviction, as well as a longer period of incarceration during which the respondent could receive treatment if he were amenable. The Court finds that it is not likely that the respondent would be rehabilitated if kept in the juvenile system. In order to adequately protect the public from the respondent, the juvenile court must decline jurisdiction and the respondent should be treated as an adult.

1.17) Declining Juvenile Court jurisdiction is in the best interests of the public.

## II. CONCLUSIONS OF LAW

2.1) This Court has jurisdiction of the person and subject matter of this proceeding.

2.2) It is in the best interest of the public to decline Juvenile Court jurisdiction and transfer the case to adult court for prosecution as an adult.



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## III. ORDER

An order declining jurisdiction was previously entered herein on January 18, 2012.

DATED this 22 day of FEBRUARY, 2012,

JUDGE MICHAEL T. DOWNES

Presented by:

CINDY LARSEN
Deputy Prosecuting Attorney
WSBA No. 26280

Approved as to form:

MAX P. HARRISON
Attorney for Respondent
WSBA No.

Present but declined to sign
AMOS GYAU
Respondent



**Snohomish County**
**Prosecuting Attorney - Criminal Division**
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SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

CL16377463

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

| | |
|---|---|
| The State of Washington,<br>Plaintiff,<br>vs.<br>GYAU, AMOS K.<br>Defendant. | 12-1-00138-8<br>BENCH TRIAL<br>FINDINGS OF FACT AND CONCLUSIONS OF LAW |

This matter was set for jury trial on August 9, 2013 and was assigned to the Honorable Judge Okrent. On the morning of August 12, 2013, the defendant stated that he wanted to waive his constitutional right to a jury trial and wanted the case decided by the Judge. After a colloquy and written waiver, the defendant's motion was granted. The trial commenced on August 12, 2013 and ended August 21, 2013, at which time the court rendered its verdict. The Court considered the testimony of witnesses, the exhibits introduced into evidence, and the arguments of counsel. Being fully advised, the court now makes the following findings of fact and conclusions of law.



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APPENDIX B

A. Findings of Fact.

1. On September 10, 2011, Y.P. (DOB 9/22/1992) came to the United States from Hong Kong on a five year student visa.
2. Y.P. had never been to the United States prior to that date and, aside from meeting one or two people on the plane ride here, did not know anyone in the United States.
3. Y.P.'s English was not very good on September 23, 2011, but had improved greatly by trial.
4. Y.P. was enrolled in an international student program at Edmonds Community College.
5. Orientation for this program was between September 12th and September 16th, 2011.
6. The defendant, Amos Gyau, was enrolled in the GED program at Edmonds Community College. The orientation for that program was in August of 2011.
7. The Edmonds Community College Gym opened to students on the first day of class, which was September 20, 2011.
8. September 20, 2011 was the first day of class for both the defendant and Y.P.
9. On September 23, 2011, Y.P. ran into the defendant at the Edmonds Community College gym.
10. Y.P. had met the defendant at the Edmonds Community College gym once before September 23, 2011. The prior meeting was sometime between September 20, 2011 and September 23, 2011.
11. Prior to September 23, 2011, the defendant and Y.P. had not had any sort of sexual or intimate relations and were not in a dating or "girlfriend/boyfriend" relationship.
12. On September 23, 2011, the defendant took Y.P. to his cousin Maxwell's residence under the pretense of loaning her a book
13. The two took a bus and then walked from somewhere around the Lynnwood Library to Maxwell's residence.
14. The court finds that the defendant and Y.P. did not have sexual intercourse at the Lynnwood Library, as claimed by the defendant.
15. When the defendant and Y.P. arrived at Maxwell's residence, Maxwell and his girlfriend were both present, but left a short time later.
16. After Maxwell and his girlfriend had left, the defendant called Y.P. upstairs where she found him in the doorway of Maxwell's bedroom wearing a grey bathrobe. According to the testimony of Maxwell and the photographs taken by police, Maxwell owned a bathrobe that matched the description given by Y.P., that was kept in the bathroom adjoining his bedroom.
17. The defendant pulled Y.P. into the bedroom. Y.P. struggled to get away from the defendant but was unable to get away because the defendant was significantly larger and stronger than Y.P.

18. On September 23, 2011, Y.P. had just turned 19 years old the day before. She was approximately 100 pounds and under 5 feet tall.
19. On September 23, 2011, the defendant was 17 years old was around 5'9" and was a weight lifter and a body builder. He has a muscular build.
20. The defendant pulled Y.P. to the bed, and put her on the bed, against her will, and while she struggled physically and verbally objected.
21. The defendant used force to pin Y.P. to the bed with his body and held her wrists with one of his hands while he kissed her and rubbed her with his other hand.
22. The defendant then moved Y.P.'s underwear to one side, inserted his penis into her vagina, and proceeded to have sexual intercourse with Y.P. while she continued to object verbally and try to squirm away from him.
23. Y.P. then decided to fake an asthma attack. She told the defendant she was in need of medical attention.
24. Eventually the defendant stopped raping her and pulled her up. He gave her some water.
25. However, as Y.P. was considering running out the door, the defendant realized that she was faking the ailment and pulled her back onto the bed.
26. At this time all of the sheets had been pulled off of the mattress near the head of the bed and Y.P. was laying at the edge of the side of the bed near the head of the bed, likely on the bare mattress.
27. The defendant again penetrated Y.P.'s vagina with his penis while pinning Y.P. to the mattress and holding her arm down.
28. On both occasions when the defendant forced sexual intercourse upon Y.P., her legs were hanging over the edge of the bed and her underwear remained on, though pushed to the side.
29. On at least one occasion during the rape, the defendant struck Y.P. in an attempt to get her to stop resisting or yelling.
30. Y.P. attempted to stop the defendant from having sexual intercourse with her by physically resisting, verbally telling him to stop and that she did not want to do this, and by yelling for help. The defendant used physical force to overcome both Y.P.'s physical and verbal resistance to the sexual intercourse.
31. During the second time that the defendant inserted his penis into Y.P.'s vagina, Y.P. began to hyperventilate. She told the defendant she was having a heart attack. She testified at trial and also told police that her hands, arms and legs began to cramp so that she could not move well or run.
32. The court finds that Y.P. had a panic attack that manifested itself as a real psychological and physiological problem.
33. The defendant carried Y.P. downstairs and put her on the couch where she continued to hyperventilate and experience cramping in her extremities.
34. Y.P. repeatedly asked the defendant to get her medical help.
35. Y.P. began to lose consciousness or faint.

36. The defendant called 911 and told them that his girlfriend was having an asthma attack.
37. The EMTs and fire department personnel arrived approximately 2 minutes after the call was placed.
38. The medical personnel found Y.P. on the floor hyperventilating and crying. They noted that she was experiencing pedal carpal spasms, which means cramping of the feet and hands that can also extend into the arms and legs and cause the victim to lose consciousness. Pedal carpal spasms can be caused by hyperventilation from a panic attack.
39. Y.P. actually lost consciousness in the presence of the medical personnel while in Maxwell's home.
40. Y.P. was able to communicate with medical personnel that she wanted to leave the residence and did not want to be with the defendant.
41. Once in the aid car, Y.P. told the medical personnel that she had been raped.
42. The defendant told the medical personnel that Y.P. was his girlfriend, that they'd been dating for a number of weeks, and that they did not have sexual intercourse that day.
43. Y.P. was transported to the hospital and examined by a sexual assault nurse. Y.P. had a number of bruises and abrasions on her body consistent with the rape and physical force that she reported.
44. The defendant's semen was found in Y.P.'s vagina.
45. Neither his DNA nor Y.P.'s DNA was found on Maxwell's bedding. However, the mattress was not collected or swabbed for DNA and Y.P. was wearing her underwear during the rape and her bottom was at the very edge of the bed during the intercourse and she was quickly removed from the bed on both occasions when the intercourse stopped.
46. Amos Gyau claimed he met Y.P. at 24-Hour Fitness or the Lynnwood Recreational Center prior to September 17, 2011 and that he and Y.P. had sexual intercourse at Antonio Bell's house on Saturday September 17, 2011. The defendant's girlfriend, Julia Velluti, testified that she was with the defendant for a large portion of the day on Saturday September 17, 2011. And Antonio Bell and Peggy Bell's testimony contradicted the defendant's claim that he had sex with Y.P. on September 17, 2011 at the Bell's residence. The Court finds that the defendant's testimony is not credible. He did not meet Y.P. at 24 Hour Fitness or the Lynnwood Recreational Center and he had not had sexual relations with Y.P. prior to September 23, 2011.
47. Y.P. was able to accurately provide a detailed description of Maxwell's bedroom prior to ever being shown any photographs of that room. This corroborates her testimony and statement that she spent a significant amount of time in that room and discredits the defendant's initial statement that Y.P. had not been upstairs at all, his second statement that she had briefly looked into the room, and even his later statement that she made it part way into the room before he carried her out of the room. This is another example where the court finds the defendant's testimony not credible.

48. The Court finds the testimony of Y.P. is credible as much of her testimony is corroborated by the physical evidence as well as the testimony of the other witnesses.
49. The medical findings and the observations of the medical personnel who responded to Maxwell's residence corroborate a non-consensual and physically violent rape and not consensual intercourse.
50. The court finds that Y.P.'s subsequent suicide attempt and psychological problems corroborate Y.P.'s claim of a traumatic rape and do not negatively impact her credibility. Y.P. appeared to suffer from post traumatic stress disorder as a result of being raped by the defendant.
51. The defendant's testimony was often inconsistent with previous statements he made and even with testimony he offered at previous times during trial. His statements and testimony were also contradicted in many ways by evidence and other witnesses.
52. The Court finds that the statements and testimony of the defendant are not credible.
53. In making these findings and in finding the defendant guilty as charged, the Court relies on the testimony of the witnesses other than the defendant, as the court deems the other witnesses largely credible and also relies on the exhibits and physical evidence.
54. On September 23, 2011 the defendant physically forced Y.P. (DOB 9/22/1992) to have sexual intercourse with him, against her will, by forcible compulsion, in the State of Washington, City of Lynnwood.

B. Conclusions of Law.

1. The court has jurisdiction over this proceeding.
2. The respondent is guilty of the offense of Second Degree Rape, as charged.

DONE IN OPEN COURT this 21st day of November, 2013.

JUDGE RICHARD T. OKRENT

Presented by:

GINDY A. LARSEN, #26280
Deputy Prosecuting Attorney

Copy received this 21st day of November, 2013.

Max Harrison # 12243
ATTORNEY FOR DEFENDANT

**Snohomish County**
**Prosecuting Attorney**
**Mark K. Roe**

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February 2, 2015

Richard D. Johnson, Court Administrator/Clerk
The Court of Appeals - Division I
One Union Square
600 University Street
Seattle, WA 98101-4170

**Re: STATE v. AMOS K. GYAU** 71013-3
**COURT OF APPEALS NO. ~~72011-2-I~~**

Dear Mr. Johnson:

The respondent's brief does not contain any counter-assignments of error. Accordingly, the State is withdrawing its cross-appeal.

Sincerely yours,

Seth A Fine

SETH A. FINE, #10937
Deputy Prosecuting Attorney

cc: Suzanne L. Elliott
Attorney(s) for Appellant

3rd Feb 15

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

THE STATE OF WASHINGTON,

Respondent.

v.

AMOS K. GYAU,

Appellant.

No. 71013-3 ~~72011-2-I~~

AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 3rd day of February, 2015, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I
ONE UNION SQUARE BUILDING
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

SUZANNE LEE ELLIOTT
ATTORNEY AT LAW
THE HOGE BUILDING
705 SECOND AVENUE, SUITE 1300
SEATTLE, WA 98104-1797

containing an original and one copy to the Court of Appeals, and one copy to the attorney(s) for the Appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 3rd day of February, 2015.

DIANE K. KREMENICH
Legal Assistant/Appeals Unit

**Snohomish County**
**Prosecuting Attorney**
**Mark K. Roe**

Criminal Division
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February 4, 2015

FILED
February 4, 2015
Court of Appeals
Division I
State of Washington

Richard D. Johnson, Court Administrator/Clerk
The Court of Appeals - Division I
One Union Square
600 University Street
Seattle, WA 98101-4170

**ATTENTION: CASE MANAGER**

**RE: AMOS K. GYAU**
**COURT OF APPEALS NO. 71013-3-I**

Dear Mr. Johnson:

Our office submitted the Brief of Respondent on February 3, 2015. The brief had the correct cause number, but the Affidavit of Mailing and correspondence letter inadvertently reflected the companion case number (Court of Appeals No. 72011-2-I). I've attached corrected documents to reflect the correct cause number.

Sincerely yours,

Diane K. Kremenich
Legal Assistant/Appeals Unit

Cc: Suzanne Lee Elliott (via e-mail)

Sent via e-mail
On this day I ~~mailed a properly stamped envelope~~ addressed to the attorney for the defendant that contained a copy of this document.
I certify under penalty of perjury under the laws of the State of Washington that this is true.
Signed at the Snohomish County Prosecutor's Office this 4th day of Feb 2015

Administration
Bob Lenz, Operations Manager
Admin East, 7th Floor
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Jason Cummings, Chief Deputy
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Family Support Division
Admin East, 6th Floor
(425) 388-7280
Fax (425) 388-7295

IN THE COURT OF APPEALS
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Signed at the Snohomish County Prosecutor's Office this 4th day of February, 2015.

DIANE K. KREMENICH
Legal Assistant/Appeals Unit

**Snohomish County**
**Prosecuting Attorney**
**Mark K. Roe**

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February 2, 2015



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**COURT OF APPEALS NO. 72011-2-I** 71013-3-I

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Sincerely yours,

Seth A Fine

SETH A. FINE, #10937
Deputy Prosecuting Attorney

cc: Suzanne L. Elliott
Attorney(s) for Appellant

On this day I mailed a properly stamped envelope addressed to the attorney for the defendant that contained a copy of this document.
I certify under penalty of perjury under the laws of the State of Washington that this is true.
Signed at the Snohomish County Prosecutor's Office on this 3rd day of Feb 2015

Dawn C

## SNOHOMISH COUNTY PROSECUTOR

## February 04, 2015 - 8:23 AM

**Transmittal Letter**

Document Uploaded: 710133-Letter.pdf

Case Name: State v. Amos K. Gyau

Court of Appeals Case Number: 71013-3

Party Respresented: yes

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Trial Court County: Snohomish - Superior Court # 12-1-00138-8

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- ○ Cost Bill
- ○ Objection to Cost Bill
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**Comments:**

No Comments were entered.

Sender Name: Diane Kremenich - Email: diane.kremenich@snoco.org

A copy of this document has been emailed to the following addresses:

suzanne-elliott@msn.com