

67340-8

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No. 67340-8-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

Winfred R. Jr.,  
(A minor child)  
Appellant.

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

11/24/14

BRIEF OF APPELLANT

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JULIA M. [Signature]

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A. ARGUMENT

**The juvenile court relieved the State of its burden of proving each element of the offense**

The Due Process Clause of the Fourteenth Amendment requires the State prove each element of an offense beyond a reasonable doubt. Where a fact negates an element of an offense, due process requires the State disprove that fact defense beyond a reasonable doubt. Consent negates the “forcible compulsion” element of second degree rape. Nonetheless, the juvenile court relieved the State of the burden of proving the nonconsent and placed the burden on Winfred to prove consent.

The agrees the due process requires it prove any fact which negates an element of the offense. Brief of Respondent at 8. The State acknowledges that the Washington Supreme Court has regularly employed this test to place the burden of proof on the State. Id at 9. The State does not contest Winfred’s arguments that consent negates forcible compulsion. But, the State nonetheless contends the juvenile court properly placed the burden of proof on Winfred.

To do so, the State relies on an anomalous case that refused to apply the negates-analysis based upon a misinterpretation of United States Supreme Court caselaw. Brief of Respondent at 9-10 (discussing State v. Camara, 113 Wn.2d 631, 637, 781 P.2d 483 (1989)). Camara recognized that nonconsent remains the “essence” of the crime of rape and is the “conceptual opposite” of forcible compulsion.” Id. at 636-37. Yet the Court concluded the legislature could constitutionally shift the burden of proving that element to the defendant. Id. at 640. Camara did so based only the mistaken conclusion that Ohio v. Martin, 480 U.S. 228, 107 S. Ct. 1098, 94 L. Ed. 2d 267 (1987), eliminated the negates analysis. But Martin did not do so. Instead, Martin concluded that because under Ohio law self defense did not negate any element of the offense, but merely created an evidentiary overlap, due process did not require the State to bear the burden of proof. 480 U.S. at 234-36. Because, as a matter of Washington law, consent does negate forcible compulsion, Martin has no application to the matter at all.

And as pointed out in Winfred’s prior brief, since Martin, the Supreme Court has reaffirmed the fundamental point that

the State must prove every fact essential to the crime, whether it is termed an element or not. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

Nonconsent remains the “essence” of the crime of rape. Camara, 113 Wn.2d at 636-37. Thus, that fact must be proved beyond a reasonable doubt.

The State offers no argument to the contrary. The State does not respond to more-recent Supreme Court decisions placing on the State the burden of proving every fact necessary to punishment. If Camara’s application of Martin were correct, surely the State could argue that the Legislature is free to reallocate the burden of proving any fact the defendant even where that fact is the “essence” of the offense or necessary to punishment. But the State does not make that argument because it is contrary to plainly established Supreme Court law. Rather, the State urges this Court to blindly follow Camara and to simply look past its misapplication of United States Supreme Court decisions. This Court must decline the State’s invitation.

“The United States Supreme Court’s interpretation of the United States Constitution is binding on the State of

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	)	
WINFRED R.,	)	
	)	
Juvenile Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 24<sup>TH</sup> DAY OF AUGUST, 2012, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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<input checked="" type="checkbox"/> WINFRED R. NASELLE YOUTH CAMP 11 YOUTH CAMP DR NASELLE, WA 98638	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

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**SIGNED** IN SEATTLE, WASHINGTON THIS 24<sup>TH</sup> DAY OF AUGUST, 2012.

X \_\_\_\_\_ 

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