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SUPREME COURT  
STATE OF WASHINGTON

NO. 88341-6

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

W.R., Jr.,

Petitioner.

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**ANSWER TO PETITION FOR REVIEW**

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**A. IDENTITY OF RESPONDENT**

Respondent, the State of Washington, asks this Court to deny the Petition for Review.

**B. COURT OF APPEALS OPINION**

The Court of Appeals decision at issue is State v. W.R., Jr., No. 67340-8-I, 2012 WL 5306237 (Div. I, October 29, 2012) (unpublished).

**C. STATEMENT OF THE CASE**

The facts of this case are set forth in detail in the Brief of Respondent filed by the State in the Court of Appeals.

**D. ARGUMENT**

The State submits this brief answer primarily to correct misstatements of fact and law in the Petition for Review.

Turning first to the facts, the charge of second-degree rape by forcible compulsion was based on an act committed on the night of January 1-2, 2011. CP 1-3. At trial, there was testimony about a previous encounter between the juvenile respondent, W.R., and the alleged victim, J.F.

In his Petition for Review, counsel describes this interaction as follows: "In July 2010, 14-year-old Winfred and 12-year-old J.F. engaged in sexual intercourse. 6/15/11 RP 12. By all accounts this act was consensual. 6/16/11 RP 135-52." Petition at 2.

This claim relies wholly on W.R.'s testimony, and ignores the contrary testimony of J.F. As to that earlier incident, J.F. testified that W.R. took down her clothes. 6/15/11 RP 13. J.F. was positioned "like a cat," facing away from W.R. 6/15/11 RP 14. W.R. put his penis in J.F.'s vagina. 6/15/11 RP 15. J.F. explained: "I was trying to get out of it. I tried to get up. . . . I tried to get up but I couldn't move because his hand was around me." 6/15/11 RP 15. It is obvious from this testimony that J.F. did *not* share W.R.'s opinion that the earlier act of sexual intercourse was consensual.

As to the law, W.R. refers to State v. Camara, 113 Wn.2d 631, 781 P.2d 483 (1989) as a "lone anomalous case" (Petition at 2) and "at best an anomalous opinion" (Petition at 5). In so doing, W.R. ignores this Court's opinion in State v. Gregory, 158 Wn.2d 759, 147 P.3d 1201 (2006). Like W.R. here, Gregory argued that the Camara court had incorrectly analyzed the decision in Martin v. Ohio, 480 U.S. 228, 107 S. Ct. 1098, 94 L. Ed.2d 267 (1987), and that Camara should accordingly be overruled.

Gregory, 158 Wn.2d at 802-03. In a carefully-reasoned opinion, this Court in Gregory reaffirmed Camara, rejecting the same argument that W.R. makes in this petition. Gregory, 158 Wn.2d at 801-04. Camara is thus *not* a “lone anomalous case.”

As to the additional cases, both federal and state, on which W.R. relies in his petition, the State refers this Court to the Brief of Respondent filed in the Court of Appeals. The State believes that it fully distinguished those cases in its brief below.

Nowhere in his petition does W.R. address the considerations governing acceptance of review that are set out in RAP 13.4(b). He identifies no conflict among the divisions of the Court of Appeals, or between the Court of Appeals and the Supreme Court. The due process issue that he has identified has been resolved against him by both the United States Supreme Court in Martin, and by this Court in Camara and Gregory. He points to no issue of substantial public interest that has yet to be determined by this Court. This Court should accordingly deny the petition for review.

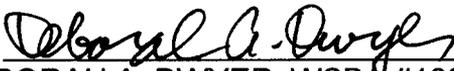
E. CONCLUSION

This Court should deny W.R.'s petition for review.

DATED this 15<sup>th</sup> day of February, 2013.

Respectfully submitted,

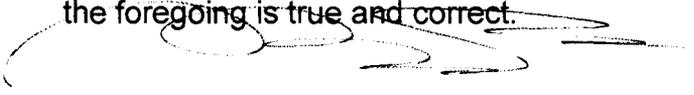
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **Gregory C. Link**, the attorney for the petitioner, at **Washington Appellate Project**, 1511 Third Avenue, Suite 701, Seattle, WA 98101, containing a copy of the **Answer to Petition for Review**, in **STATE V. W.R.JR.**, Cause No. **88341-6**, in the Supreme Court of the State of Washington.

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

  
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Name  
Done in Seattle, Washington

02-12-13  
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