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**State of Washington**  
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Court of Appeals No. 53401-1-II

In the Court of Appeals of the State of Washington,  
Division Two

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STATE OF WASHINGTON,  
Respondent,  
v.  
JOHN WAYNE VINTON,  
Appellant.

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**APPELLANT'S REPLY BRIEF**

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Appeal from Pierce County Superior Court No. 18-1-00573-8

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## I. INTRODUCTION

The trial court's denial of Mr. Vinton's request for a *Frank's* hearing constituted an abuse of discretion. Defense counsel demonstrated to the trial court that the misrepresentations undermined the validity of the warrant. Respondent focuses its argument on the intentions of Mr. Vinton's trial counsel in requesting a *Frank's* hearing. See Respondent's Brief at 1, 3-4, 8. However, Mr. Vinton's trial counsel's purported intentions in seeking a *Franks* hearing are not relevant to whether or not the trial court abused its discretion in denying a hearing.

Respondent also argues that Mr. Vinton's claims of ineffective assistance are conclusory. Mr. Vinton disagrees with this characterization of his argument. In his opening brief, Mr. Vinton presented evidence of several instances from the record where counsel was ineffective.

## II. ARGUMENTS IN REPLY

### A. **TRIAL COUNSEL'S SUBJECTIVE INTENT FOR SEEKING A *FRANKS* HEARING IS NOT RELEVANT TO WHETHER THE TRIAL COURT ERRED IN REFUSING TO HOLD THE HEARING.**

Whether Mr. Vinton's trial counsel's had additional intentions of beyond challenging the warrants is irrelevant to the inquiry before this Honorable Court. Counsel may have multiple reasons for pursuing a *Franks* hearing and as long as counsel meets the operative legal standard, the hearing should be held. Respondent asserts that Appellant was not

entitled to a *Franks* hearing because Appellant's trial counsel allegedly wished to obtain additional discovery during the hearing. Respondent cites no case law to support its contention that a counsel must have a singular intention – to challenge the warrant – when pursuing a *Franks* hearing. See Respondent's Brief at 1, 3-4, 8. The subjective intent of counsel is not part of the *Franks* test, and is irrelevant. Even if trial counsel had subjective intentions to obtain additional discovery through a *Franks* hearing, this should not factor into the analysis of whether the trial court abused its discretion in denying a *Franks* hearing.

Trial counsel made a preliminary showing that there were material misrepresentations and omissions which undermined the finding of probable cause for the warrants. Mr. Vinton's trial counsel asserted that the reason for the intentional and material omissions were to cover-up the fact that an illegal search of the Silverado occurred prior to obtaining a warrant for such search. See Appellant's Opening Brief at 7. Clearly, if the material omissions were intended to cover up an illegal search, this would undermine the probable cause finding for the warrant. Therefore, the trial court abused its discretion in failing to conduct a *Franks* hearing.

**B. MR. VINTON'S OPENING BRIEF PROVIDES EVIDENTIARY SUPPORT TO HIS ARGUMENT THAT HIS TRIAL COUNSEL WAS INEFFECTIVE.**

Respondent argues that Mr. Vinton only provides conclusory

statements to support his argument that his trial counsel was ineffective. See Respondent's Brief at 1, 18-14. This is inaccurate. "Conclusory" is defined as "[e]xpressing a factual inference without stating the underlying facts on which the inference is based." Conclusory, Black's Law Dictionary (10th ed. 2014). A fact is "what took place, an act, an incident, a reality as distinguished from supposition or opinion." Grimwood v. Univ. of Puget Sound, Inc. 110 Wn.2d 355, 359, 753 P.2d 517 (1988). The opening brief alleges several facts which support the argument that trial counsel's performance was deficient.

In his opening brief, Mr Vinton presents evidence of his counsel's deficient performance by 1) failing to provide any independent evidence to support a *Franks* hearing; 2) by failing to perform sufficient pre-trial discovery, depriving Mr. Vinton of a defense; 3) failing to propose jury instructions; 4) failing to provide a witness list or call any defense witnesses; and 5) failing to object to any piece of evidence presented by the State. Mr. Vinton asserts he has demonstrated that his trial counsel provided ineffective assistance in contravention of state and federal law.

### **III. CONCLUSION**

For the reasons stated herein, and in Mr. Vinton's Opening Brief, Mr. Vinton respectfully requests that this Court reverse the jury verdict.

Respectfully submitted this 15th day of April, 2020.

THE APPELLATE LAW FIRM

/s/ E. Lindsay Calkins

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CERTIFICATE OF SERVICE

I, Lindsay Calkins, certify under penalty of perjury under the laws of the United States and the State of Washington that on April 15, 2020, I caused to be served the document to which this attached to the parties listed below in the matter shown next to their names:

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**Transmittal Information**

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