

WASHINGTON APPELLATE PROJECT

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Oliver R. Davis ext. 119

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September 13, 2013

The Supreme Court of the State of Washington  
Temple of Justice  
415 12th Ave. SW  
Olympia, Washington 98501-2314

James Whisman  
Senior Deputy Prosecuting Attorney  
King County Prosecuting Attorney's Office  
W554 King County Courthouse  
516 3<sup>rd</sup> Avenue  
Seattle, Washington 98104

**RE:** State v. Mario Humphries, Supreme Court case no. 88234-7  
Correction of statement made during Petitioner Humphries' rebuttal oral argument.

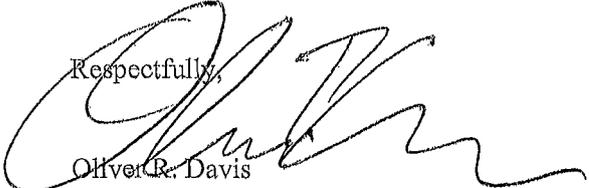
To the Court:

During oral argument, I stated to Justice Wiggins that the issue of whether the serious offense stipulation required reversal, not only of the VUFA, but also the Assault, was "fully" litigated in the Court of Appeals, and was decided on its merits by that Court. The first part of that statement was incorrect.

In the Opening Brief, I argued that the stipulation was constitutional error requiring reversal of the VUFA. I also argued that reversal was required for ineffective assistance, because the stipulation was read to the jury without an accompanying cautionary instruction precluding its use as propensity evidence on the Assault.

The Court of Appeals held that any constitutional error regarding the stipulation was harmless beyond a reasonable doubt as to the Assault, because of other trial evidence. Court of Appeals Decision, at pp. 15-17. In the motion for reconsideration, I questioned whether my Opening Brief had adequately presented the issue of reversal of the Assault as constitutional error. I asked the Court of Appeals to reconsider its decision that the stipulation did not merit reversal of the Assault. The issue of constitutional harmless error was more fully argued in the Petition for Review, and in both parties' Supplemental Briefs.

Respectfully,

  
Oliver R. Davis

Attorney for Petitioner Mario Humphries

 ORIGINAL

**DECLARATION OF FILING AND MAILING OR DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 88234-7**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Ann Marie Summers, DPA, James Whisman, DPA  
King County Prosecutor's Office – Appellate Unit
- petitioner
- Attorney for other party

  
MARIA ANA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: September 13, 2013

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**To:** Maria Riley  
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### Letter re: Oral Argument

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By

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