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Supreme Court No. 89364-1  
Court of Appeals No. 69864-8-I

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

MIGUEL ANGEL VILLANUEVA-GONZALEZ,

Respondent.

ON REVIEW FROM THE COURT OF APPEALS, DIVISION ONE

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. SUMMARY OF APPEAL

Miguel Villanueva-Gonzalez was convicted of one count of second degree assault and one count of fourth degree assault after he allegedly hit his girlfriend in the nose and then grabbed her by the neck during a single uninterrupted episode. Absent clear legislative intent to the contrary, courts define the crime of assault as a course of conduct for purposes of the Double Jeopardy Clause. A person may not be separately convicted for each blow landed, or each injury inflicted, during a single altercation. Because Mr. Villanueva-Gonzalez's actions occurred during a single continuous assault, he committed only one offense. His conviction for fourth degree assault must be vacated.

B. ISSUE PRESENTED

The Double Jeopardy Clause prohibits multiple convictions for the same offense. Second degree assault and fourth degree assault are the same offense for double jeopardy purposes. Was Mr. Villanueva-Gonzalez convicted twice for the same offense, in violation of the Double Jeopardy Clause, where his convictions for second degree assault and fourth degree assault were based on acts committed against the same person during a single uninterrupted episode?

### C. STATEMENT OF THE CASE

Mr. Villanueva-Gonzalez and Maria Gobeia were in a romantic relationship for about seven years and lived together with their children. RP 173-74. On the night of March 26, 2011, Ms. Gobeia went out dancing at a nightclub without Mr. Villanueva-Gonzalez. RP 176. When she returned home, Mr. Villanueva-Gonzalez was not there. RP 176-77. She went into the children's room to watch television with them and the babysitter. RP 176-77.

When Mr. Villanueva-Gonzalez arrived home later, he was angry that Ms. Gobeia had gone out dancing without him. RP 178. He pulled her out of the room, causing her to hit herself on a piece of furniture. RP 179. Then he hit her in the nose once with his forehead. RP 179. Next he grabbed her by the throat and held her against the furniture, saying he did not want her in the house. RP 193-94.

Ms. Gobeia went to the hospital that night. RP 240. A "CAT" scan revealed a nasal fracture. RP 242. Ms. Gobeia did not tell the treating physician she had been held by the neck and he did not notice any marks on her neck or other signs of strangulation. RP 246-47.

The State charged Mr. Villanueva-Gonzalez with one count of second degree assault by strangulation, RCW 9A.36.021(1)(g) (count

I), and one count of second degree assault by intentionally assaulting another person and thereby recklessly inflicting substantial bodily harm, RCW 9A.36.021(1)(a) (count II). CP 22-23.

At trial, the deputy prosecutor told the jury that count I referred to the alleged strangulation of Ms. Gobeia, and that count II referred to the alleged hitting of Ms. Gobeia in the nose and the resulting nasal fracture. RP 348-49, 354-57; see also CP 40, 44 (to-convict instructions).

At the defense request, the court provided instructions on the lesser crime of fourth degree assault for both counts. CP 24-28, 47-49.

The jury found Mr. Villanueva-Gonzalez guilty as charged of second degree assault for count II, regarding the nasal fracture. CP 61. As for count I, the jury found him guilty of the lesser crime of fourth degree assault. CP 59.

On appeal, Mr. Villanueva-Gonzalez argued his two convictions for assault violated the Double Jeopardy Clause because he committed only one assault. The Court of Appeals agreed and ordered that his conviction for fourth degree assault be vacated. State v. Villanueva-Gonzalez, 175 Wn. App. 1, 7, 304 P.3d 906 (2013), review granted, 316 P.3d 494 (2014).

D. ARGUMENT

MR. VILLANUEVA-GONZALEZ WAS PUNISHED  
TWICE FOR THE SAME OFFENSE, IN VIOLATION  
OF THE DOUBLE JEOPARDY CLAUSE

1. This Court applies the “Blockburger” test to determine legislative intent for purposes of the Double Jeopardy Clause

The Double Jeopardy Clause protects against multiple punishments for the same offense.<sup>1</sup> North Carolina v. Pearce, 395 U.S. 711, 717, 726, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969), overruled on other grounds by Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989); State v. Gocken, 127 Wn.2d 95, 100, 896 P.2d 1267 (1995).

Within constitutional constraints, the Legislature has the power to define criminal conduct and assign punishment for such conduct. State v. Calle, 125 Wn.2d 769, 776, 888 P.2d 155 (1995); Whalen v. United States, 445 U.S. 684, 688, 100 S. Ct. 1432, 63 L. Ed. 2d 715

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<sup>1</sup> The Double Jeopardy Clause of the federal constitution provides that no individual shall “be twice put in jeopardy of life or limb” for the same offense, and the Washington Constitution provides that no individual shall “be twice put in jeopardy for the same offense.” U.S. Const. amend. V; Const. art. I, § 9. Washington gives its constitutional provision the same interpretation that the United States Supreme Court gives to the Fifth Amendment. State v. Gocken, 127 Wn.2d 95, 107, 896 P.2d 1267 (1995).

(1980). Thus, when a single trial and multiple punishments for the same act or course of conduct are at issue, the question is whether the Legislature intended that multiple punishments be imposed. State v. Kelley, 168 Wn.2d 72, 77, 226 P.3d 773 (2010). The reviewing court's duty is to ensure that the sentencing court did not exceed its legislative authority by imposing multiple punishments for the same offense.<sup>2</sup> Calle, 125 Wn.2d at 776.

To ascertain legislative intent, the Court first examines the applicable statutes to see if they expressly permit multiple punishments for the same act or course of conduct. State v. Hughes, 166 Wn.2d 675, 681, 212 P.3d 558 (2009). If the statutes do not speak to multiple punishments, the Court then applies the "same evidence" or "Blockburger test." Id. at 681-82, 682 n.6; see Blockburger v. United

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<sup>2</sup> The State contends no double jeopardy violation occurred because the State made clear through the charging document, jury instructions and closing argument that it was relying upon two distinct acts for the crimes charged. Petition at 5-6. But "[i]t is Congress, and not the prosecution, which establishes and defines offenses." Sanabria v. United States, 437 U.S. 54, 69-70, 98 S. Ct. 2170, 57 L. Ed. 2d 43 (1978). Whether a course of criminal conduct involves one or more distinct "offenses" under the statute is determined by the Legislature, not the prosecutor. Id. Thus, if the Legislature intended to impose only a single punishment for a single course of criminal conduct, the prosecutor may not override that decision by dividing the crime into multiple, distinct acts.

States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). Under that test, two offenses are the same for double jeopardy purposes if they are the same in law and fact. Hughes, 166 Wn.2d at 682; Blockburger, 284 U.S. at 304.

Here, Mr. Villanueva-Gonzalez was convicted of second degree assault under RCW 9A.35.021(1)(a) and fourth degree assault under RCW 9A.36.041. The statutes do not expressly authorize multiple punishments for the same act or transaction. Therefore, the “same evidence” test applies. Hughes, 166 Wn.2d at 681-82.

2. The two convictions are the same in law because one is a lesser-included offense of the other

To determine whether two offenses are the same in law under Blockburger, the question is whether each statutory provision requires proof of a fact the other does not. Hughes, 166 Wn.2d at 682; Blockburger, 284 U.S. at 304. It is well-established that “[w]here lesser and greater offenses are concerned, they are the same offense for purposes of double jeopardy, as the lesser offense requires no proof beyond that required to prove the greater.” Brown v. Ohio, 432 U.S. 161, 168, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977); Rutledge v. United States, 517 U.S. 292, 297, 116 S. Ct. 1241, 134 L. Ed. 2d 419 (1996).

An offense is legally a lesser-included offense if each of the elements of the lesser offense is a necessary element of the greater. State v. Fernandez-Medina, 141 Wn.2d 448, 454, 6 P.3d 1150 (2000).

Fourth degree assault is a lesser-included offense of second degree assault as charged in this case. To prove second degree assault, the State was required to prove Mr. Villanueva-Gonzalez “[i]ntentionally assault[ed] another and thereby recklessly inflict[ed] substantial bodily harm.” RCW 9A.36.021(1)(a); CP 44. To prove fourth degree assault, the State was required to prove Mr. Villanueva-Gonzalez “assault[ed] another.” RCW 9A.36.041(1); CP 49. Because proof of fourth degree assault required no proof beyond what was required to prove second degree assault, they are the same in law. Brown, 432 U.S. at 168; Hughes, 166 Wn.2d at 682.

3. The convictions are the same in fact if the underlying acts occurred during the same continuous assaultive episode

In determining whether two offenses that are the same in law are also the same in fact, the question is whether the Legislature intended to prohibit each individual act “or the course of action which they constitute. If the former, then each act is punishable separately. . . . If the latter, there can be but one penalty.” Blockburger, 284 U.S. at 302

(quotation marks and citation omitted). Thus, if the Legislature intended to punish the crime of assault as a course of conduct, then Mr. Villanueva-Gonzalez could not be punished twice for hitting Ms. Gobeia in the nose and then grabbing her by the neck, if his actions took place during a single criminal episode.

This Court has never squarely addressed whether the Legislature intended to punish the crime of assault as a course of conduct or whether it intended to punish each individual act. In State v. Tili, 139 Wn.2d 107, 116-17, 985 P.2d 365 (1999), the Court strongly suggested in *dicta* that assault is a course-of-conduct crime. The question in Tili was the “unit of prosecution” for the crime of rape. The Court observed that, unlike the rape statute, which proscribes each act of “sexual intercourse,” the assault statute does not proscribe each physical act against a victim. Id. Instead, “the Legislature only defined ‘assault’ as that occurring when an individual ‘assaults’ another.” Id. (citing RCW 9A.36.041). The term “assault” is further defined by the common law, “which sets out many different acts as constituting

‘assault,’ some of which do not even require touching.”<sup>3</sup> Id.

“Consequently, the Legislature clearly has not defined ‘assault’ as occurring upon *any* physical act.” Id. Thus, a person cannot be charged and convicted “for every punch thrown in a fistfight without violating double jeopardy.” Id.

The Court’s conclusion in Tili is sound. It is consistent with the fundamental principle of statutory interpretation that the Court must presume the Legislature did not intend absurd results. State v. Ervin, 169 Wn.2d 815, 823-24, 239 P.3d 354 (2010). If, as the State argues, the Legislature intended that each offensive *act* committed during an assault be separately punishable, then a person could receive a separate conviction for every punch, kick, or other blow landed during a fistfight. The Legislature could not have intended this absurd result.

Also as noted in Tili, under the common law definition of assault, a person can commit an assault without even touching another.

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<sup>3</sup> The common law sets forth three definitions of “assault”: (1) an intentional touching, with unlawful force, that is harmful or offensive; (2) an attempt, with unlawful force, to inflict bodily injury upon another; and (3) an attempt to create in another apprehension and fear of bodily injury, and which in fact creates such reasonable apprehension and fear. State v. Smith, 159 Wn.2d 778, 781-82, 154 P.3d 873 (2007).

Tili, 139 Wn.2d at 116-17. An assault occurs when a person attempts to create apprehension and fear of bodily injury in another and actually creates such reasonable apprehension and fear, even if no injury results. State v. Smith, 159 Wn.2d 778, 781-82, 154 P.3d 873 (2007). If this definition of assault applied in a given case and each act were separately punishable, how would the State demonstrate separate assaults? It would be impossible in most cases to divide a single victim's fear into distinct occurrences. See State v. Pelayo, 881 S.W.2d 7, 13 (Tenn. Ct. App. 1994).

In accordance with this analysis, courts in other jurisdictions have consistently concluded that assault is a course-of-conduct crime. A person cannot be punished separately for each blow landed during a fistfight, but only for each separate and distinguishable assaultive episode. See United States v. Chipps, 410 F.3d 438, 448-49 (8th Cir. 2005) (defendant could receive only one conviction arising from single uninterrupted attack because assault is a "course-of-conduct offense"); Glymph v. United States, 490 A.2d 1157, 1160-61 (D.C. Ct. App. 1985) (defendant's several acts committed during single episode "established not a succession of detached incidents but a continuing course of assaultive conduct"); State v. Garnett, 298 S.W.3d 919, 924

(Mo. App. 2009) (defendant could not suffer two convictions for inflicting two stab wounds because “injuries were inflicted in one quick, continuing attack”); State v. McCoy, 174 N.C. App. 105, 116-17, 620 S.E.2d 863 (2005) (defendant could be convicted only once because multiple injuries arose “from a single continuous transaction”); Pelayo, 881 S.W.2d at 13 (defendant could be convicted only once for inflicting two separate stab wounds because blows “coalesced into an unmistakable single act”); cf. People v. Wooten, 214 Cal. App. 4th 121, 133, 153 Cal. Rptr. 3d 684 (2013) (defendant committed two separate assaults where the two episodes were separated by intervening act and defendant’s purposes for committing the two assaults were different).

In sum, the Court of Appeals was correct to conclude that assault is a course-of-conduct crime. That conclusion is logical, avoids absurd results, and is consistent with authority in other jurisdictions.

4. Only one “assault” occurred in this case

When a crime is defined as a course of conduct, a single crime occurs “when the impulse is single, . . . no matter how long the action may continue,” but “[i]f successive impulses are separately given, even

though all unite in swelling a common stream of action, separate indictments lie.”<sup>4</sup> Blockburger, 284 U.S. at 302 (quotation marks and citation omitted); see also State v. Green, 156 Wn. App. 96, 100-01, 230 P.3d 654 (2010) (“in the case of a single ‘impulse,’ only ‘one indictment lies’”) (quoting Blockburger, 284 U.S. at 302).

This Court has not had occasion to address the circumstances under which two or more assaultive acts that are the same in law are also the same in fact.<sup>5</sup> In State v. Byrd, 25 Wn. App. 282, 284-85, 607 P.2d 321 (1980), the Court of Appeals concluded that two assaultive

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<sup>4</sup> The United States Supreme Court also applies the Blockburger “impulse” test in “unit of prosecution” cases where the crime is defined as a course of conduct to determine whether a defendant received two convictions for the same offense. See United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 244, 73 S. Ct. 227, 97 L. Ed. 260 (1952) (“The offense made punishable under the Fair Labor Standards Act is a course of conduct. Such a reading of the statute compendiously treats as one offense all violations that arise from that singleness of thought, purpose or action, which may be deemed a single ‘impulse,’ a conception recognized by this Court in the Blockburger case.”); State v. Durrett, 150 Wn. App. 402, 410, 208 P.3d 1174 (2009) (citing C.I.T., 344 U.S. at 224). The “unit of prosecution” analysis, rather than the Blockburger test, applies when a defendant is convicted of violating the *same statute* multiple times. State v. Adel, 136 Wn.2d 629, 633, 965 P.2d 1072 (1998).

<sup>5</sup> The issue in this case is whether multiple assaultive acts committed against *the same person* constitute multiple separate assaults. It is well-settled that a single assault committed against multiple persons may give rise to multiple convictions. E.g., State v. Smith, 124 Wn. App. 417, 432, 102 P.3d 158 (2004), *aff’d*, 159 Wn.2d 778, 154 P.3d 873 (2007) (citing State v. Wilson, 125 Wn.2d 212, 220, 883 P.2d 320 (1994)).

acts were sufficiently separated by time, place and intervening acts to constitute two separate assaults. In Byrd, Byrd knocked on the victim's door and when she answered, he forced his way in, grabbed her around the waist, and attempted to pull her back into the apartment. Id. She retreated into the apartment and locked the door against him. Id. Minutes later Byrd tried to force his way in again, the victim ran out the back door, and Byrd caught her just as she reached her manager's apartment and grabbed her breasts and between her legs. Id. The Court of Appeals held two separate assaults occurred—one in the doorway and the other outside the manager's door. Id. at 290.

Courts in other jurisdictions have similarly focused on the degree to which the assaultive acts were separated by time, distance and intervening acts. “[E]ach case requires a careful review of the facts and circumstances . . . and a conscientious consideration of the temporal and geographic proximity of the separate acts.” Pelayo, 881 S.W.2d at 13. The ultimate question is whether the defendant formed a new intent, e.g., Garnett, 298 S.W.3d at 923, or a new “impulse,” e.g., Chipps, 410 F.3d at 449, to attack the victim. “Factors such as time, place of commission, and the defendant’s intent, as evidenced by his

conduct and utterances determine whether separate offenses should result from a single incident.” Garnett, 298 S.W.3d at 923.

Courts in other jurisdictions generally apply these considerations in determining whether more than one assault has occurred. See Chipps, 410 F.3d at 448-49 (only one assault although first series of assaultive acts occurred inside house and second series of acts occurred after victim had stumbled out front door; “[g]iven the uninterrupted nature of the attack,” there was only a “single impulse underlying Mr. Chipps’s assaultive conduct”); Wooten, 214 Cal. App. 4th at 132-33 (two separate assaults where intervening act separated first series of acts from second, and defendant’s purpose shifted from first attack to second); Glymph, 490 A.2d at 1160-61 (although defendant committed multiple assaultive acts over one-hour period, only one assault occurred because “there was no break in the continuity of events”); Garnett, 298 S.W.3d at 923 (one assault where defendant inflicted multiple stab wounds in one quick, continuing attack); McCoy, 174 N.C. App. at 116-17 (two separate assaults where multiple assaultive acts were committed on two separate days); Pelayo, 881 S.W.2d at 13 (although two stab wounds were inflicted, only one

assault occurred because defendant's actions "coalesced into an unmistakable single act").

Applying these considerations in this case, the Court of Appeals concluded only one assault occurred. Villanueva-Gonzalez, 175 Wn. App. at 6-8. This Court should affirm that conclusion. The assaultive acts took place during a single, uninterrupted episode. Ms. Gobeia testified Mr. Villanueva-Gonzalez pulled her out of the children's room, then hit her in the nose and grabbed her by the throat. RP 179, 193-94. The acts occurred in the same place, within a short time frame, with no break in the continuity of events. The acts arose from a single "impulse" and Mr. Villanueva-Gonzalez had no occasion to form a separate intent between them. Therefore, his two assault convictions are the same in fact as well as in law. Blockburger, 284 U.S. at 304.

5. The statutory scheme indicates the Legislature intended to allow only a single assault conviction per course of assaultive conduct, regardless of how many different alternative means are charged

The State contends it may prosecute and convict a defendant multiple times under different theories of assault where multiple different kinds of acts are committed during a single assaultive episode. Petition at 6-8. This argument is contrary to legislative intent. The statutory scheme indicates the Legislature intended to allow only a

single assault conviction per course of assaultive conduct, even if more than one alternative means can be proved.

In prior case law, this Court recognized that although the Legislature divided the crime of assault into different degrees and alternative means of commission, the statute creates only a single crime of “assault.” The statute sets forth four different degrees of assault. RCW 9A.36.011, .021, .031., 041. In Fernandez-Medina, the Court declared that the statutes setting forth the greater and lesser degrees “proscribe but one offense.” Fernandez-Medina, 141 Wn.2d at 454.

Similarly, among the crimes of first, second, and third degree assault, the Legislature delineated a total of 21 alternative means of commission. Smith,<sup>6</sup> 159 Wn.2d at 784; RCW 9A.36.011, .021, .031. The crime of second degree assault, specifically, has seven alternative means. RCW 9A.36.021. But despite the statute’s numerous and diverse alternative means, it proscribes only one offense. As this Court explained in Smith, the second degree assault statute “articulates a *single criminal offense* and then provides six [now seven] separate

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<sup>6</sup> At the time Smith was decided, there were only 17 statutory alternative means of assault. See Smith, 159 Wn.2d at 784.

subsections by which the offense may be committed.” Smith, 159 Wn.2d at 784 (emphasis added).

When a statute sets forth alternative means by which a crime may be committed, the alternative means represent different theories under which the State may prosecute a given case; they do not represent distinct crimes. “In an alternative means case, the evidence includes only one event, even though it discloses alternative means by which the defendant may have participated in the event.” State v. Smith, 124 Wn. App. 417, 426, 102 P.3d 158 (2004), aff’d, 159 Wn.2d 778, 154 P.3d 873 (2007) (quotation marks and citation omitted).

Often, the defendant is charged with conduct that may fulfill more than one statutory alternative. Smith, 159 Wn.2d at 784-85. But that does not mean the defendant has committed more than one crime.

This point is reinforced by the undisputable fact that a person may not be convicted of more than one alternative means of committing a single offense without offending the double jeopardy prohibition. “A defendant charged and tried under multiple statutory alternatives experiences the same jeopardy as one charged and tried on a single theory. The defendant is in jeopardy of a single conviction and subject to a single punishment, whether the State charges a single

alternative or several.”<sup>7</sup> State v. Wright, 165 Wn.2d 783, 801, 203 P.3d 1027 (2009); see also Sanabria v. United States, 437 U.S. 54, 69, 98 S. Ct. 2170, 57 L. Ed. 2d 43 (1978) (acquittal on any alternative theory of liability bars re prosecution on “any aspect of the count”).

Thus, although the Legislature created several various alternative means of committing the crime of assault (with new alternatives being added all the time), this does not mean the Legislature intended each alternative to represent a separate crime. Although each alternative has specific, distinct factual requirements, they all comprise “a single criminal offense.” Smith, 159 Wn.2d at 784. The Legislature’s decision to codify the alternative means does not undermine the conclusion, discussed in the sections above, that the Legislature intended the crime of assault to be a course-of-conduct crime. Under the facts of this case, Mr. Villanueva-Gonzalez

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<sup>7</sup> See also RCW 10.43.020 (“When the defendant has been convicted or acquitted upon an indictment or information of an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein.”).

committed only one assault, regardless of how many different alternative means of committing the crime the State could have proved.

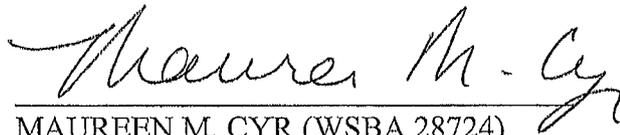
Other courts that have considered the question have similarly concluded that a person may not be convicted of multiple assaults under different theories where his or her actions took place during a single assaultive episode. See, e.g., United States v. McLaughlin, 164 F.3d 1, 14-17 (D.C. Cir. 1998) (convictions for assault with intent to kill while armed and aggravated assault while armed, arising from single assaultive episode in which victim received multiple gunshot wounds, violated double jeopardy); Ingram v. United States, 353 F.2d 872, 874-75 (D.C. Cir. 1965) (convictions for “assault with intent to kill” and “assault with a dangerous weapon” arising from “one assault with a knife” violated double jeopardy); State v. Jenkins, 307 Md. 501, 521, 515 A.2d 465 (1986) (convictions for assault with intent to murder and assault with intent to maim, disfigure or disable, arising from single uninterrupted assault, violated double jeopardy); McCoy, 174 N.C. App. at 115-17 (convictions for assault causing serious bodily injury and assault with a deadly weapon, arising from single assaultive episode in which defendant stabbed victim, hit her and threw her into a wall, violated double jeopardy); State v. Morato, 619 N.W.2d 655,

663 (S.D. 2000) (three convictions for aggravated assault, arising from single beating in which victim suffered multiple injuries, violated double jeopardy); Pelayo, 881 S.W2d at 9-10, 13 (convictions for assault causing serious bodily injury and assault with deadly weapon, arising from single episode in which defendant inflicted two stab wounds, violated double jeopardy); State v. Ritter, 167 Vt. 632, 633-34, 714 A.2d 624 (1998) (two convictions for second degree assault under two statutory alternatives, arising from single episode in which defendant hit and kicked his girlfriend, violated double jeopardy).

E. CONCLUSION

Mr. Villanueva-Gonzalez committed only one assault because his actions took place during a single, continuous assaultive episode. This Court should affirm the Court of Appeals' decision to vacate the conviction for fourth degree assault.

Respectfully submitted this 18th day of February, 2014.



MAUREEN M. CYR (WSBA 28724)  
Washington Appellate Project - 91052  
Attorneys for Petitioner

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,	)	
	)	
PETITIONER,	)	NO. 89364-1
	)	COA NO. 69864-8-1
v.	)	
	)	
MIGUEL VILLANUEVA-GONZALEZ,	)	
	)	
RESPONDENT.	)	

---

**DECLARATION OF SERVICE**

I, NINA ARRANZA RILEY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

ON THE 18<sup>TH</sup> DAY OF FEBRUARY, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF RESPONDENT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL 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:

[X] ANNE CRUSER  
CLARK COUNTY PROSECUTOR'S OFFICE  
PO BOX 5000  
VANCOUVER, WA 98666-5000  
[prosecutor@clark.wa.gov]

**SIGNED** IN SEATTLE, WASHINGTON THIS 18<sup>TH</sup> DAY OF FEBRUARY, 2014.

x 

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### **SUPPLEMENTAL BRIEF OF RESPONDENT**

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