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COA No. 64763-6-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

ANTHONY MACK,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT  
OF KING COUNTY

The Honorable Regina Cahan

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REPLY BRIEF

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## A. REPLY ARGUMENT

In his Opening Brief, Mr. Mack argued his trial counsel provided ineffective assistance by failing to impeach a State's witness and that he was convicted of fourth degree assault as a result. Appellant acknowledges the statements regarding witness Rushing testifying to the events at trial, and the misidentification of exhibit 14, which were erroneous, as the Respondent correctly points out. Brief of Respondent, at pp. 4, 14. However, Rushing did not significantly pertain to the procedural and case facts regarding Mr. Mack's single appellate issue, in which Mr. Mack argues that Faye George should have been impeached by her statements in Officer Bown's report, to show the jury how her trial account of the location of the alleged assault differed from her pre-trial statements to police.<sup>1</sup>

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<sup>1</sup> The Appellant's Opening Brief noted that the trial court excluded evidence of proffered testimonial claims by others that Ms. Rushing had made up the allegations; this evidence was deemed inadmissible below. Undersigned appellate counsel erroneously conflated the record whether this impeachment or direct testimony of Ms. Rushing was what was excluded from presentation to the jury at the hearing just prior to the start of trial. 12/17/09RP at 16-17. Rushing's testimony was among that of all the multiple hotel witnesses; Mr. Mack contended on appeal that his counsel failed to impeach and thus decrease the credibility of a different witness, Ms. Faye George.

The mis-described State's exhibit 14 should have been more clearly described as Officer's Bown's report *which contained statements* by Ms. George, as opposed to "Ms. George's police statement to Officer Nicolas Bowns." Opening Brief, at p. 6. Counsel regrets the error.

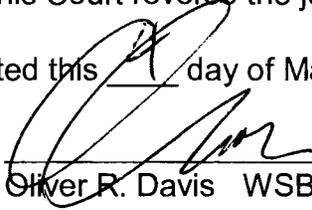
Mr. Mack recognizes that his appellate challenge to his trial counsel's decision not to take certain actions at the proceeding below faces hurdles under the applicable appellate standards of review. See Appellant's Opening Brief, at p. 5; State v. McNeal, 145 Wn.2d 352, 360-62, 37 P.3d 280 (2002).

For purposes of Reply to the State's contentions, Mr. Mack relies on the arguments for relief in his Opening Brief that Ms. George's statements to the officer were different than her trial testimony, and would have impeached her credibility. Mr. Mack further argues the alleged error in effective assistance "undermines confidence in the outcome" of his assault trial, requiring his fourth degree assault conviction to be reversed. See Strickland v. Washington, 466 U.S. 668, 694, 80 L.Ed.2d 674, 694, 104 S.Ct. 2052 (1984); U.S. Const., Amend. 6.

## **B. CONCLUSION**

Based on the foregoing and the Opening Brief, Mr. Mack respectfully requests that this Court reverse the judgment below.

Respectfully submitted this 24 day of May, 2011.

  
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Washington Appellate Project - 9105  
Attorneys for Appellant

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DIVISION ONE**

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STATE OF WASHINGTON,	)	
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Respondent,	)	
	)	NO. 64763-6-I
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	)	
ANTHONY MACK,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, JOSEPH ALVARADO, STATE THAT ON THE 4TH DAY OF MAY, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF** 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:

[X] RANDI J AUSTELL,  
KING COUNTY PROSECUTING ATTORNEY  
APPELLATE UNIT  
KING COUNTY COURTHOUSE  
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SEATTLE, WA 98104

(X) U.S. MAIL  
( ) HAND DELIVERY  
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**SIGNED** IN SEATTLE, WASHINGTON THIS 4TH DAY OF MAY, 2011.

x \_\_\_\_\_ *JA*

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