

FILED  
Court of Appeals  
Division III  
State of Washington  
1/17/2019 12:59 PM

SUPREME COURT NO. 96769-5  
COA NO. 35374-5-III

IN THE SUPREME COURT OF WASHINGTON

---

---

STATE OF WASHINGTON,

Respondent,

v.

JOSE PEDRO LINARES,

Petitioner.

---

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR YAKIMA COUNTY

The Honorable Richard Bartheld, Judge

---

---

PETITION FOR REVIEW

---

---

CASEY GRANNIS  
Attorney for Petitioner

NIELSEN, BROMAN & KOCH, PLLC  
1908 East Madison  
Seattle, WA 98122  
(206) 623-2373

**TABLE OF CONTENTS**

	Page
A. <u>IDENTITY OF PETITIONER</u> .....	1
B. <u>COURT OF APPEALS DECISION</u> .....	1
C. <u>ISSUE PRESENTED FOR REVIEW</u> .....	1
D. <u>STATEMENT OF THE CASE</u> .....	5
E. <u>ARGUMENT WHY REVIEW SHOULD BE ACCEPTED</u> .....	4
THE DEADLY WEAPON ENHANCEMENT IS NOT SUPPORTED BY SUFFICIENT EVIDENCE .....	4
F. <u>CONCLUSION</u> .....	9

**TABLE OF AUTHORITIES**

Page

WASHINGTON CASES

State v. Colquitt,  
133 Wn. App. 789, 137 P.3d 892 (2006) ..... 7

State v. Cook,  
69 Wn. App. 412, 848 P.2d 1325 (1993) ..... 6

State v. Green,  
94 Wn.2d 216, 616 P.2d 628 (1980) ..... 5

State v. Hundley,  
126 Wn.2d 418, 895 P.2d 403 (1995) ..... 5, 8

State v. Jameison,  
\_\_ Wn. App. 2d \_\_, 421 P.3d 463 (2018) ..... 8

State v. Lua,  
62 Wn. App. 34, 813 P.2d 588 (1991),  
disapproved on other grounds by  
State v. Coria,  
120 Wn.2d 156, 839 P.2d 890 (1992) ..... 5

FEDERAL CASES

In re Winship,  
397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) ..... 5

OTHER AUTHORITIES

RAP 13.4(b)(3) ..... 5

RCW 9.94A.825 ..... 5-6, -8

U.S. Const. amend. XIV ..... 5

Wash. Const. art. I, § 3 ..... 5

**A. IDENTITY OF PETITIONER**

Jose Linares asks the Supreme Court to accept review of the Court of Appeals decision designated in Part B of this petition.

**B. COURT OF APPEALS DECISION**

Linares requests review of the decision in State v. Jose Pedro Linares, Court of Appeals No. 35374-5-III (slip op. filed December 18, 2018), attached as appendix A.

**C. ISSUE PRESENTED FOR REVIEW**

Whether the State failed to prove the deadly weapon enhancement because the evidence did not show the unknown instrument used to cut the victim in the back had the capacity to inflict death and was likely to produce or may easily and readily produce death?

**D. STATEMENT OF THE CASE**

On the afternoon of February 4, 2016, Eric Ruiz went to a laundromat in Sunnyside to wash clothes. 2RP<sup>1</sup> 377-78. He noticed two men pacing back and forth. 2RP 384-85, 409. He felt uneasy. 2RP 385-86. As he loaded up his clothes baskets, the two men went outside. 2RP 390. Ruiz walked to his car. 2RP 390. When he pulled the car keys out

---

<sup>1</sup> The verbatim report of proceedings is referenced as follows: 1RP - one volume consisting of 5/16/16, 5/20/16, 6/6/16, 6/28/16, 7/22/16, 8/10/16, 8/23/16, 10/13/16, 10/28/16, 11/30/16, 2/9/17, 2/16/17, 2/24/17, 3/21/17, 3/31/17; 2RP - four consecutively paginated volumes consisting of 4/10/17, 4/11/17, 4/12/17, 4/13/17, 4/14/17, 4/17/17; 3RP 5/25/17.

of his pocket, one of the men, identified by Ruiz as Jose Pedro Linares, asked if he "gang banged." 2RP 391, 430, 433. Ruiz said he didn't. 2RP 391.

A short time later, Ruiz went to open the door and "got stuck in the back." 2RP 391, 425. He described the force used as a "real quick, like medium-soft punch to the back." 2RP 392. Ruiz never saw a weapon of any type. 2RP 425-26. Ruiz saw the men run off behind the building. 2RP 393, 430.

Ruiz drove off in his car. 2RP 391-92. The blood went through his shirt and onto the car seat. 2RP 396. He drove to his girlfriend's place of employment and described what happened. 2RP 393-94. Her boss called 911. 2RP 394. They applied pressure to the wound with a paper towel to stop the bleeding. 2RP 395. Ambulance personnel arrived and advised him to go to the hospital. 2RP 427. He did not think he was going to die or faint. 2RP 428. He did not feel impaired. 2RP 428.

Photos were taken at the hospital. 2RP 402; Ex. 6A-D. Exhibit 6D is a close-up photo of the wound, with a measuring stick showing its diameter to be one half inch. 2RP 404. Whatever cut him left a tear in his shirt. 2RP 399; Ex. 8D. Hospital staff did not determine the depth of the wound. 2RP 403. Testing revealed no internal bleeding. 2RP 403-04. No vital organs were hit. 2RP 404. Ruiz stayed in the hospital for two to

three hours. 2RP 415. He felt "sore," like "when you lift weights one day and the next day." 2RP 415. "It wasn't excruciating or nothing like that." 2RP 415. The soreness lasted three or four days. 2RP 415. Ruiz drove himself to the police station the next day. 2RP 415. He identified Jose Pedro Linares as the person who stabbed him. 2RP 417-18, 422.

Detective Berry testified that the depth of the wound could not be determined from the photo. 2RP 445; Ex. 6D. Berry related that vital organs are contained in the torso. 2RP 446. He had seen somebody die from a stab wound to the torso caused by internal bleeding or a severing an artery. 2RP 446. It's possible to die from one stab wound if a vital organ is hit. 2RP 447. The location of the Ruiz's wound caused him concern because it was an area where there are vital organs. 2RP 470, 474. The police did not recover a weapon. 2RP 373, 646.

Officer Ortiz testified Jose Pedro and his brother, Jose Ascension Linares, are associated with the Sureno (Bell Garden Loco) gang. 2RP 627. According to Ortiz, gang members ask someone if they "bang" to determine whether that person is a rival gang member. 2RP 630-31. The Nortenos and Surenos are rival gangs in the area. 2RP 622. The Nortenos are associated with the color red and the San Francisco 49ers football team. 2RP 624-25. Ruiz had no gang affiliation. 2RP 407. But he drove a red car, had a gold and red 49ers trinket hanging in his car, wore a black,

white and red shirt, and had tattoos consisting of stars and Old English-type script. 2RP 378, 397, 404-07. Ortiz believed Ruiz was mistakenly associated with the Norteno gang based on these signifiers and attacked for this reason. 2RP 638-40.

The jury found Linares guilty of second degree assault and returned a special verdict that he was armed with a deadly weapon.<sup>2</sup> CP 103, 105-06.

On appeal, Linares argued the evidence was insufficient to establish the deadly weapon element of the second degree assault charge and was also insufficient to establish the deadly weapon enhancement. The Court of Appeals disagreed. Slip op. at 7-8.

**E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

**THE DEADLY WEAPON ENHANCEMENT IS NOT SUPPORTED BY SUFFICIENT EVIDENCE.**

The instrument used to cut Ruiz was never observed or recovered. Its length is unknown. The depth of the wound is unknown. Whether the instrument could reach a vital organ or artery is unknown. The State failed to prove Linares used "an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely

---

<sup>2</sup> Consistent with the jury instructions treating the charged third degree assault as a lesser offense, the jury did not return a verdict on that count because it found Linares guilty of second degree assault. CP 97, 104.

to produce or may easily and readily produce death." RCW 9.94A.825. Linares seeks review of this sufficiency of evidence issue under RAP 13.4(b)(3).

Due process requires the State to prove all necessary facts of the crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Hundley, 126 Wn.2d 418, 421, 895 P.2d 403 (1995); U.S. Const. amend. XIV; Wash. Const. art. I, § 3. "Before a defendant can be subjected to an enhanced penalty, the State must prove beyond a reasonable doubt every essential element of the allegation which triggers the enhanced penalty." State v. Lua, 62 Wn. App. 34, 42, 813 P.2d 588 (1991), disapproved on other grounds by State v. Coria, 120 Wn.2d 156, 839 P.2d 890 (1992). Evidence is sufficient only if, after viewing the evidence and all reasonable inferences in a light most favorable to the State, a rational trier of fact could find each element of the crime proven beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

Linares does not seek review of the Court of Appeals' determination that sufficient evidence supports the "deadly weapon" element of second degree assault. But the evidence is insufficient to meet the heightened standard for the deadly weapon enhancement. For purposes of proving the "deadly weapon" element of the crime, the State



need only prove "the weapon had the capacity to cause death *or serious bodily injury*. When seeking an enhanced sentence, however, the State must prove that the weapon had the capacity to cause death and death alone." State v. Cook, 69 Wn. App. 412, 417-18, 848 P.2d 1325 (1993) (footnote omitted).

The enhancement statute defines "deadly weapon" as follows: "an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas." RCW 9.94A.825.

According to the Court of Appeals, "[t]he instrument clearly had the capacity to inflict death, given it was sharp enough to pierce Mr. Ruiz's shirt and skin. In addition, Mr. Linares used the instrument in a manner likely to cause death. Mr. Linares stabbed Mr. Ruiz in the back. In so doing, he risked injury to Mr. Ruiz's arteries and internal organs." Slip op. at 7.

In determining the sufficiency of evidence, existence of a fact cannot rest upon guess, speculation, or conjecture. State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006). Based on the evidence presented to the jury, it is speculation that the instrument was used in a manner likely to cause death.

No one saw the implement and none was ever recovered. There is no evidence establishing the length of the cutting instrument. The injury consisted of a cut, one half inch in diameter, to the back. Ex. 6D. Hospital staff did not determine how deep the wound went. 2RP 403. No one did. The testifying officer could not determine its depth from the photo. 2RP 445. Ruiz bled from the wound. 2RP 396. But medical testing revealed no internal bleeding. 2RP 403-04. The State did not call the treating doctor to testify. 2RP 680. As a result, there was no expert testimony presented to the trier of fact about where the vital organs or arteries were located in relation to the surface of the skin. There was no testimony about the depth of wound needed to reach a vital organ or artery.

At trial, a police officer testified that Ruiz was stabbed in an area where there are vital organs, and that people can die by being hit in a vital organ. 2RP 446-470, 470, 474. In opposing defense counsel's motion to dismiss, the State argued Linares had the intent to stab Ruiz in an area where vital organs exist and that the evidence showed "the area where he

was stabbed could produce a fatal injury had Mr. Linares driven the object further into his side." 2RP 710-11. But without evidence about the length of the blade or sharp instrument, it is only speculation that it was long enough to reach a vital organ or major blood vessel. It is conjecture that Linares could have driven the object further into Ruiz's body because no one knows how long the object was.

Inferences in the criminal setting must be based on likelihood, not possibility. State v. Jameison, \_\_ Wn. App. 2d \_\_, 421 P.3d 463, 472 (2018). Reasonable inferences may be drawn from the evidence, but "an inference is not reasonable if based on speculation or conjecture." Id. at 471. "'[C]ould' is not the relevant standard in determining sufficiency of the evidence. Hundley, 126 Wn.2d at 421. "We are not justified in inferring, from mere possibilities, the existence of facts." Jameison, 421 P.3d at 471.

Because there is no evidence demonstrating the length of the sharp instrument used to cut Ruiz, the depth of the wound, or the location of vital organs or arteries in relation to the wound, there is no basis beyond guesswork to conclude the instrument was "likely to produce or may easily and readily produce death" based on "manner in which it is used." RCW 9.94A.825. The manner in which the instrument was used here consisted of a stab to the back. There are vital organs in the torso, as

testified to by the police officer, but the gaps in the evidence do not permit a rational trier of fact to find that the object used to make the cut could reach the vital organs and thereby likely produce death or easily and readily produce it. The special verdict on the deadly weapon enhancement must therefore be vacated due to insufficient evidence.

F. **CONCLUSION**

For the reasons stated, Linares requests that this Court grant review.

DATED this 17th day of January 2019.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

  
CASEY GRANNIS

WSBA No. 37301

Office ID No. 91051

Attorneys for Petitioner

# APPENDIX A

**FILED**  
**DECEMBER 18, 2018**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

STATE OF WASHINGTON,	)	No. 35374-5-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
JOSE PEDRO LINARES,	)	
	)	
Appellant.	)	

PENNELL, A.C.J. —A jury convicted Jose Pedro Linares of second degree assault with a deadly weapon and found by special verdict a gang aggravator and deadly weapon enhancement. Mr. Linares appeals, arguing: (1) insufficient evidence supports the deadly weapon element for both his conviction and the deadly weapon enhancement, and (2) the trial court erroneously imposed a 24-month term of confinement for the deadly weapon enhancement. We disagree with Mr. Linares’s sufficiency challenge, but agree that the deadly weapon enhancement only carried a 1-year term. We therefore remand for correction of the judgment and sentence.

FACTS

On February 4, 2016, Eric Ruiz was washing his clothes at a Sunnyside laundromat when he saw an unknown man pacing back and forth. Soon another man came on the scene and both men started pacing. Mr. Ruiz felt uneasy. He decided to leave.

As Mr. Ruiz approached his car, one of the two men, later identified as Jose Linares, went up to Mr. Ruiz and asked if he “gang banged.” 2 Report of Proceedings (RP) (Apr. 12, 2017) at 391. Mr. Ruiz was wearing some red and his car was red. Mr. Ruiz answered no. Mr. Ruiz then turned to open his car door and, as he did so, he felt himself being stabbed in the back. Mr. Ruiz did not see a weapon, but he knew he had been stabbed because after a quick thrust he felt blood dripping down his back. Mr. Ruiz saw the two men run off together behind the laundromat.

Mr. Ruiz briefly informed a laundromat employee of what had occurred and then drove to his girlfriend’s place of employment. While he was driving, blood from Mr. Ruiz’s wound soaked through his shirt and onto his car seat.

Once at his girlfriend’s work, various employees came to Mr. Ruiz’s aid and began applying pressure to the wound to prevent it from bleeding further. After Mr. Ruiz described what happened, his girlfriend’s employer called the police. When emergency personnel arrived, they advised Mr. Ruiz to go to the hospital. Mr. Ruiz complied at the urging of his girlfriend and mother-in-law.

Law enforcement met Mr. Ruiz at the hospital and obtained several photos of his wound. The photos depict the general nature of Mr. Ruiz’s injury and show the wound was about one-half inch in diameter. The depth of Mr. Ruiz’s wound was never measured because hospital staff instead chose to perform a CT (computed tomography)

No. 35374-5-III  
*State v. Linares*

scan and a urine test to assess whether the wound was deep enough to cause any internal bleeding. The tests were also used to evaluate whether Mr. Ruiz had suffered any impact to his vital organs. Both tests came back negative and Mr. Ruiz was released from the hospital after only a few hours. Mr. Ruiz stated his wound was sore for a few days, but it did not produce excruciating pain.

Mr. Linares was charged with assaulting Mr. Ruiz. At the jury trial, a law enforcement detective testified that stab wounds can be fatal and that he had seen someone die from a stab wound to the torso. The detective explained that a stab wound to the torso could cause death due to internal bleeding caused by a severed artery or an impacted vital organ. The detective also testified that while he did not think Mr. Ruiz was going to die from the stab wound, he was concerned Mr. Ruiz might have some internal bleeding or impacted vital organs, e.g., his kidneys or possibly a lung, based on the location of the wound. Also, in regard to the incident, the detective stated that the question Mr. Linares asked of Mr. Ruiz, “do you gang bang,” is essentially “a callout to find out whether [someone is] a friend or foe,” which often precipitates violence. 3 RP (Apr. 13, 2017) at 466-67.

The trial testimony indicated Mr. Linares was affiliated with the Sureño gang. The Sureño gang is associated with the color blue. It is a rival to the Norteño gang, which is identified with the color red.



No. 35374-5-III  
*State v. Linares*

Law enforcement was unable to find the weapon that had been used to stab Mr. Ruiz. No knife or similar instrument was admitted into evidence at trial.

The jury found Mr. Linares guilty of second degree assault with a gang aggravator and a deadly weapon enhancement. The trial court sentenced Mr. Linares to an exceptional sentence of 120 months in confinement, which includes a 24-month deadly weapon enhancement. Mr. Linares appeals.

#### ANALYSIS

##### *Sufficiency of the evidence*

Mr. Linares claims the trial evidence did not establish use of a deadly weapon, as required for his second degree assault conviction and deadly weapon enhancement. As set forth below, we disagree.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences drawn therefrom. *Id.* Circumstantial evidence and direct evidence are equally reliable. *Id.* We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

No. 35374-5-III

*State v. Linares*

*Deadly weapon requirement in the context of second degree assault*

The jury found Mr. Linares guilty of second degree assault in violation of RCW 9A.36.021(1)(c), which provides: “A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree . . . [a]ssaults another with a deadly weapon.” A “deadly weapon” is defined to include a firearm, an explosive, or other object which, based on the circumstances of the case, was “readily capable of causing death or substantial bodily harm.” RCW 9A.04.110(6). “‘Substantial bodily harm’ means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.” RCW 9A.04.110(4)(b).

A jury may conclude a defendant utilized a deadly weapon in fact based on the weapon’s inherent capacity and the circumstances of its use, including the intent and ability of the user, the degree of force, the part of the body to which it was applied, and the extent of the actual injuries that were inflicted. *State v. Holmes*, 106 Wn. App. 775, 781-82, 24 P.3d 1118 (2001); *State v. Barragan*, 102 Wn. App. 754, 761, 9 P.3d 942 (2000). “Ready capability is determined in relation to surrounding circumstances, with reference to potential substantial bodily harm.” *State v. Shilling*, 77 Wn. App. 166, 171, 889 P.2d 948 (1995). To be deemed a deadly weapon, a defendant must demonstrate

some manifestation of willingness to use the weapon or instrument to cause death or substantial bodily harm. *State v. Gotcher*, 52 Wn. App. 350, 354, 759 P.2d 1216 (1988).

Viewing the evidence in a light most favorable to the State, a rational juror could conclude that the instrument used by Mr. Linares was readily capable of causing death or substantial bodily harm. Although no weapon was ever recovered, the photographs and description of Mr. Ruiz's wound indicate Mr. Linares used a knife or sharp instrument, about one-half inch wide, to pierce through Mr. Ruiz's shirt and stab him in the back. Also, the facts show that this assault was likely gang motivated, e.g., Mr. Linares mistakenly believing Mr. Ruiz was a member of a rival gang, which evidences Mr. Linares's intent to harm Mr. Ruiz. As was testified to at trial, Mr. Linares's question, "do you gang bang," 2 RP (Apr. 12, 2017) at 391, indicates Mr. Linares was trying to assess whether Mr. Ruiz was a gang rival and was looking to instigate an act of violence.

While no depth measurement was taken in regard to Mr. Ruiz's wound, the evidence was uncontested that Mr. Ruiz had suffered a stab wound, not an incised wound.<sup>1</sup> This raised concerns about damage to arteries or vital organs. Even though Mr. Ruiz was not seriously injured, there was ample evidence for the jury to find that

---

<sup>1</sup> Stab wounds are deeper than they are long. Incised wounds are superficial injuries that are longer than deep. See *Bien v. Smith*, 546 F. Supp. 2d 26, 35-36 (E.D. N.Y. 2008).

No. 35374-5-III

*State v. Linares*

this outcome was due more to luck than because of the nature of Mr. Linares's weapon or conduct. Sufficient evidence justified Mr. Linares's conviction.

*Deadly weapon requirement in the context of the sentence enhancement*

The jury also found, by special verdict, that Mr. Linares used a deadly weapon when he committed the second degree assault. This finding was based on a slightly different deadly weapon definition. Pertinent to this case, to prove the use of "deadly weapon" as necessary for a sentence enhancement, the State must establish that (1) the instrument used by Mr. Linares had the "capacity to inflict death" and (2) Mr. Linares used the instrument in a manner "likely to produce" death or in a way that "may easily and readily produce death." RCW 9.94A.825; *State v. Peterson*, 138 Wn. App. 477, 484, 157 P.3d 446 (2007).

Sufficient evidence justified the jury's determination that the instrument used by Mr. Linares met the two criteria of a deadly weapon. The instrument clearly had the capacity to inflict death, given it was sharp enough to pierce Mr. Ruiz's shirt and skin. In addition, Mr. Linares used the instrument in a manner likely to cause death. Mr. Linares stabbed Mr. Ruiz in the back. In so doing, he risked injury to Mr. Ruiz's arteries and internal organs. A jury could rightly view Mr. Linares's conduct as more serious than an intentional aggravated battery. It was an attempted assassination. The fact that Mr.

No. 35374-5-III  
*State v. Linares*

Linares did not succeed in killing Mr. Ruiz does not change the nature of his conduct. Based on the facts produced at trial, the deadly weapon enhancement was justified.

*Deadly weapon enhancement term exceeds statutory maximum*

Mr. Linares argues, and the State concedes, that the trial court's imposition of 24 months of confinement for the deadly weapon enhancement exceeded the statutory maximum for a deadly weapon enhancement for his second degree assault conviction. Sentencing errors resulting in unlawful sentences may be raised for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). Whether a sentencing court exceeded its statutory authority under the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, is an issue of law reviewed de novo. *State v. Murray*, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003). ““When a trial court exceeds its sentencing authority under the SRA, it commits reversible error.”” *In re Postsentence Review of Cage*, 181 Wn. App. 588, 594, 326 P.3d 805 (2014) (quoting *State v. Hale*, 94 Wn. App. 46, 53, 971 P.2d 88 (1999)).

Second degree assault is a class B felony. RCW 9A.36.021(2)(a). Deadly weapon enhancements for class B felonies are limited to a term of confinement of one year. RCW 9.94A.533(4)(b). This term can be doubled if the defendant “has previously been sentenced for any deadly weapon enhancements.” RCW 9.94A.533(4)(d). However, nothing in the record before us indicates this provision is applicable.

No. 35374-5-III  
*State v. Linares*

Therefore, as both Mr. Linares and the State agree, this matter must be remanded for the trial court to correct the term of confinement for Mr. Linares's deadly weapon enhancement.

#### CONCLUSION

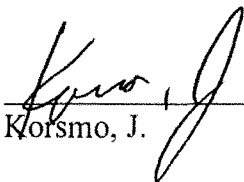
Mr. Linares's conviction is affirmed. The 24-month term of confinement for the deadly weapon enhancement is stricken. This matter is remanded for imposition of a 1-year term for the deadly weapon enhancement. Mr. Linares's presence is not necessary at any proceeding for this correction to his sentence.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



\_\_\_\_\_  
Pennell, A.C.J.

WE CONCUR:

  
\_\_\_\_\_  
Korsmo, J.  
\_\_\_\_\_  
Fearing, J.

**NIELSEN, BROMAN & KOCH P.L.L.C.**

**January 17, 2019 - 12:59 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35374-5  
**Appellate Court Case Title:** State of Washington v. Jose Pedro Linares  
**Superior Court Case Number:** 16-1-00255-8

**The following documents have been uploaded:**

- 353745\_Petition\_for\_Review\_20190117125809D3722491\_8618.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was PFR 35374-5-III .pdf*

**A copy of the uploaded files will be sent to:**

- David.Trefry@co.yakima.wa.us
- joseph.brusic@co.yakima.wa.us
- nielsene@nwattorney.net

**Comments:**

copy mailed to: Jose Linares, 330280 Monroe Corrections Center - SOU PO Box 514 Monroe, WA 98272

---

Sender Name: John Sloane - Email: Sloanej@nwattorney.net

**Filing on Behalf of:** Casey Grannis - Email: grannisc@nwattorney.net (Alternate Email: )

Address:  
1908 E. Madison Street  
Seattle, WA, 98122  
Phone: (206) 623-2373

**Note: The Filing Id is 20190117125809D3722491**