

FILED  
Court of Appeals  
Division II  
State of Washington  
12/20/2017 4:22 PM

NO. 50035-3-II

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

---

STATE OF WASHINGTON,

Respondent,

v.

ARTURO RIOS,

Appellant.

---

APPELLANT'S REPLY BRIEF

---

Kristen V. Murray, WSBA No. 36008  
Attorney for Appellant

HART JARVIS MURRAY CHANG PLLC  
2025 First Avenue, Ste. 830  
Seattle, WA 98121  
(206) 735-7474  
kmurray@hjmc-law.com

**TABLE OF CONTENTS**

I. ARGUMENT ..... 1

    A SPECIAL JURY VERDICT IS NOT REQUIRED BEFORE  
    A DEFENDANT CAN BE MADE TO REGISTER AS A  
    FELONY FIREARM OFFENDER.....1

    B. THE TRIAL COURT ABUSED ITS DISCRETION BY  
    ORDERING MR. RIOS TO REGISTER BECAUSE THE  
    JURY VERDICT DID NOT ESTABLISH MR. RIOS WAS  
    CONVICTED OF A FELONY FIREARM OFFENSE.....2

---

II. CONCLUSION..... 5

**TABLE OF AUTHORITIES**

**CASES**

*State v. Griffin*, 126 Wn. App. 700, 109 P.3d 870 (2005) .....4

**STATUTES AND OTHER AUTHORITIES**

RCW 9.41.010 .....2, 3, 4, 5  
RCW 9.41.330 .....3, 5  
RCW 46.20.285.....4

## **I. ARGUMENT**

### **A. A SPECIAL JURY VERDICT IS NOT REQUIRED BEFORE A DEFENDANT CAN BE MADE TO REGISTER AS A FELONY FIREARM OFFENDER.**

In its brief the Respondent asserts, “The Defendant argues that a special jury finding was required to find that the Defendant used a firearm, although the statutory scheme does not require the filing of a special allegation or a jury finding.” Brief of Respondent, p. 1. The Respondent further argues, “Defendant appears to imply that *Apprendi v. New Jersey* and *Blakely v. Washington* require such a finding.” *Id.* The Respondent misunderstands appellant’s argument.

The appellant is not arguing a special jury verdict is required to establish Mr. Rios was convicted of a felony firearm offense. Rather, the argument is that before a defendant can be ordered to register as a felony firearm offender, there must be a conviction for a felony firearm offense. Because the record in this case does not establish that Mr. Rios was convicted of a felony firearm offense, the trial court abused its discretion when it imposed firearm registration.

**B. THE TRIAL COURT ABUSED ITS DISCRETION BY ORDERING MR. RIOS TO REGISTER UNDER RCW 9.41.330 BECAUSE THE JURY VERDICT DID NOT ESTABLISH MR. RIOS WAS CONVICTED OF A FELONY FIREARM OFFENSE.**

Here, the trial court could not have made a finding that Mr. Rios was convicted of a felony firearm offense based on the jury's general verdict. To be clear, the appellant is not arguing the jury's general verdict was improper. However, because it was a general verdict, the trial court was left with insufficient information to determine whether Mr. Rios was in fact convicted of a felony firearm offense as defined by RCW 9.41.010. Use of a firearm as a deadly weapon would, of course, constitute a felony firearm offense under the statute. However, use of a knife as a deadly weapon would not.

It cannot be assumed the jury found Mr. Rios used a firearm in the commission of his crime and rejected the evidence a knife may have been used instead. If the jury found Mr. Rios used a knife as a deadly weapon and not a firearm, Mr. Rios conviction does not qualify as a felony firearm offense. The State alleged Mr. Rios used a firearm or, in the alternative, a knife as a deadly weapon. CP 1. During the trial, there was evidence presented to support both alternatives. The jury was instructed by the trial court that both a knife and a firearm could constitute a deadly weapon. CP 33; RP I 127. Further, during closing argument, the State pointed out to

the jury that they did not need to find Mr. Rios used a firearm to find him guilty of assault in the second degree.

[Defense] may point out to you, as he brought out from the witnesses, that the knife is kind of squared off, too, right. He may suggest to you that it was the knife, not the gun. All right. And so, I just need to address that briefly. Look at your definition of a deadly weapon because, remember, the charge is assault in the second degree, which means an assault with a deadly weapon, not a gun. A gun is a deadly weapon, but it's not the only one.

RP I 143-44. The State then further argued in rebuttal, "I will agree with Mr. Ehrhardt it doesn't matter if it's a gun or a knife, all right, because either one is a deadly weapon." RP I 156.

A defendant may be ordered to register as a felony firearm offender *only* if convicted of a felony firearm offense.

[W]henver a defendant in this state is convicted of a felony firearm offense . . . the court must consider whether to impose a requirement that the person comply with the registration requirements of RCW 9.41.333 and may, in its discretion, impose such a requirement.

RCW 9.41.330(1). RCW 9.41.010 defines a felony firearm offense as, *inter alia*, "[a]ny felony offense if the offender was armed with a firearm in the commission of the offense." RCW 9.41.010 (9)(e). If a defendant is convicted of a felony firearm offense, it is undisputed the trial court has discretion to impose firearm registration under RCW 9.41.330. If a defendant is *not* convicted of a felony firearm offense, firearm registration cannot be imposed, and it would be an abuse of discretion to do so.

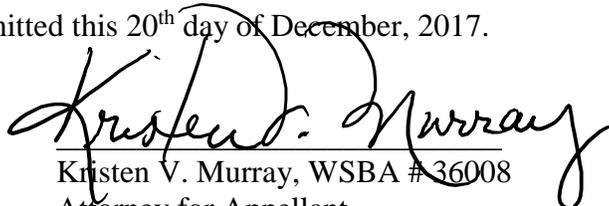
The Respondent argues that whether to impose felony firearm registration is similar to the court's authority to impose other collateral consequences such as driver's license suspension. In support of its argument, the Respondent relies on *State v. Griffin*, 126 Wn. App. 700, 109 P.3d 870 (2005). However, the court's authority to impose felony firearm registration is not comparable to the authority to impose licensing restrictions. Courts have the authority to determine whether a defendant used a motor vehicle in the commission of a felony by making factual findings from the record. That is, the court can look at evidence that was introduced or facts agreed by the parties to make the finding. As a result of that finding, RCW 46.20.285 imposes licensing restrictions. In contrast, a trial court cannot simply make factual findings from the record to determine whether firearm registration can be imposed. A defendant can only be required to register as a felony firearm offender if they have been **convicted** of a felony firearm offense. The sole question for the court is whether the crime of conviction constitutes a felony firearm offense under RCW 9.41.010. The court cannot impose felony firearm registration if a defendant has not been convicted of a crime defined as a felony firearm offense even if there is evidence that the person possessed a firearm in the commission of the offense. To do so would run afoul of the statute and constitute an abuse of discretion.

Because the jury could have rejected the State's assertion that a firearm was used and, instead, found Mr. Rios used a knife, the trial court could not determine Mr. Rios was convicted of a felony firearm offense as defined by RCW 9.41.010. The jury's verdict lacked the information necessary for the trial court to make such a finding. Accordingly, the trial court abused its discretion when it imposed upon Mr. Rios the duty to register as a felony firearm offender under RCW 9.41.330. Therefore, it is respectfully requested this Court strike the requirement that Mr. Rios register as a felony firearm offender under RCW 9.41.330.

## II. CONCLUSION

It is respectfully requested that this Court strike the requirement that Mr. Rios register as a felony firearm offender under RCW 9.41.330.

Respectfully submitted this 20<sup>th</sup> day of December, 2017.

  
Kristen V. Murray, WSBA #36008  
Attorney for Appellant

**DECLARATION OF SERVICE**

I hereby declare that on December 20, 2017, I filed the Appellant's Brief via Electronic Filing for the Court of Appeals for Division II and delivered via E-mail the same to:

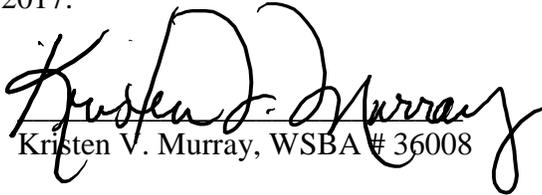
Mr. Jason Walker  
Grays Harbor County Prosecutor's Office  
102 W. Broadway Ave, Room 102  
Montesano, WA 98563-3621  
[jwalker@co.grays-harbor.wa.us](mailto:jwalker@co.grays-harbor.wa.us)  
[appeals@co.grays-harbor.wa.us](mailto:appeals@co.grays-harbor.wa.us)

I further declare that I delivered via United States Postal Service the same to:

Mr. Arturo Rios  
6421 S. Sheridan Avenue  
Tacoma, WA 98408-4713

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated December 20, 2017.

  
Kristen V. Murray, WSBA # 36008

**HART JARVIS MURRAY CHANG PLLC**

**December 20, 2017 - 4:22 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50035-3  
**Appellate Court Case Title:** State of Washington, Respondent v. Arturo Rios, Appellant  
**Superior Court Case Number:** 17-1-00006-2

**The following documents have been uploaded:**

- 500353\_Briefs\_20171220162140D2854489\_0401.pdf  
This File Contains:  
Briefs - Appellants Reply  
*The Original File Name was Appellants reply brief.pdf*

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

- appeals@co.grays-harbor.wa.us
- jwalker@co.grays-harbor.wa.us

**Comments:**

---

Sender Name: Kristen Murray - Email: kmurray@hjmc-law.com

Address:

2025 1ST AVE STE 830  
SEATTLE, WA, 98121-2179  
Phone: 206-735-7474

**Note: The Filing Id is 20171220162140D2854489**