

NO. 34512-2-III  
COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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**STATE OF WASHINGTON,**  
Plaintiff/Respondent,  
V.  
**FRANCISCO J. MUNOZ QUINTERO,**  
Defendant/Appellant.

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**BRIEF OF APPELLANT**

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## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES	
CASES	ii
RULES AND REGULATIONS	ii
ASSIGNMENT OF ERROR	1
ISSUE RELATING TO ASSIGNMENT OF ERROR	1
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	7
ARGUMENT	8
CONCLUSION	11
APPENDIX “A”	

**TABLE OF AUTHORITIES**

**CASES**

*Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed.2d 694 (1966)  
..... 5

*Personal Restraint of Rainey*, 168 Wn.2d 367, 229 P.3d 686 (2010)..... 8

*State v. Cortes-Aguilar*, 176 Wn. App. 264, 308 P.3d 778 (2013)..... 9

*State v. Howard*, 182 Wn. App. 91, 328 P.3d 969 (2014)..... 10

**RULES AND REGULATIONS**

CrR 3.5..... 6

ER 404(b)..... 6

## **ASSIGNMENT OF ERROR**

1. The trial court erroneously entered a lifetime no-contact order between Francisco J. Munoz Quintero and his daughter. (CP 1352; Appendix “A”)

## **ISSUE RELATING TO ASSIGNMENT OF ERROR**

1. Did the trial court properly consider the imposition of a lifetime no-contact order between a father and daughter after the father was convicted of second degree murder of the child’s mother?

## **STATEMENT OF THE CASE**

Mr. Munoz Quintero and Luisa Garcia had a rocky relationship for several years. There were a number of instances of domestic violence that were never reported to law enforcement. They involved choking and a firearm. (Pelletier RP 484, ll. 17-24; RP 486, ll. 8-14; RP 491, l. 1 to RP 491, l. 23; RP 493, ll. 12-14; McLaughlin RP 47, l. 23 to RP 48, l. 13)

Mr. Munoz Quintero's and Ms. Garcia's daughter, A.M., was born on February 19, 2014. (CP 1352)

Ms. Garcia left work as a security associate with Walmart on December 24, 2015 at 9:03 p.m. (Pelletier RP 519, ll. 20-23; RP 531, ll. 20-23)

Mr. Munoz Quintero and his daughter were visiting with an uncle on Christmas Eve. Ms. Garcia arrived at the uncle's house to pick them up. (McLaughlin RP 74, l. 17 to RP 75, l. 12)

Fernando Cuellar received a telephone call from Mr. Munoz Quintero on Christmas Eve. He was going to stay with Mr. Cuellar for Christmas. Ms. Garcia was giving him a ride to the apartment. Mr. Munoz Quintero never arrived. (Pelletier RP 835, ll. 20-23; RP 836, ll. 5-19; RP 837, ll. 4-6)

The Pasco Police Department received a weapons complaint early Christmas morning from a caller at 311 North 8<sup>th</sup> in Pasco. The scene was actually at 619 North Tweedt Street in Kennewick. The 9-1-1 call came from the address in Pasco. Officers Santiago-Serrano and Park arrived at the scene. (Pelletier RP 537, ll. 23-25; RP 540, ll. 2-9; McLaughlin RP 12, ll. 18-20; RP 14, ll. 11-15)

America de la Mora and Vanessa Chapa were taking garbage from their apartment to dumpsters. They saw a car stop in the middle of the street.

A woman got out and the car sped off. The woman then fell down in the middle of the street. (Pelletier RP 546, ll. 5-11; RP 547, ll. 19-23; RP 548, ll. 13-19; McLaughlin RP 33, ll. 13-14; RP 34, ll. 13-14)

The woman in the street was Luisa Garcia. She was gasping for air. Her eyes rolled back in her head. She tried to speak but only a gurgling sound emerged. Veronica Rodriguez, America's sister, did CPR on Ms. Garcia until EMTs arrived. (Pelletier RP 549, ll. 11-25; McLaughlin RP 36, ll. 2-7; RP 39, ll. 22-23; RP 40, ll. 12-14)

When the EMTs/paramedics arrived they began treating Ms. Garcia. There were no signs of life as they transported her to Trios in Kennewick. Yahaira Garcia, Ms. Garcia's younger sister, identified her body at Trios. (McLaughlin RP 43, ll. 22-25; RP 64, ll. 1-17; Pelletier RP 577, ll. 23-24; RP 578, l. 2; RP 584, l. 6 to RP 585, l. 9; RP 587, ll. 2-5; RP 588, ll. 22-24; RP 596, l. 12 to RP 597, l. 5)

After leaving the scene Mr. Munoz Quintero called his sister, Adriana Munoz, and told her he had just shot Ms. Garcia. He also told his friend Angel Villela-Rojas the same thing. (Pelletier RP 540, l. 20 to RP 541, l. 17; RP 839, l. 20 to RP 840, l. 4; RP 840, ll. 14-15; McLaughlin RP 15, ll. 1-8; RP 30, ll. 1-7)

When Mr. Munoz Quintero went to Mr. Villela-Rojas's apartment on the morning of December 25 he also told him that he had thrown the gun

he had used out the window of the car on I-82. He had also thrown Ms. Garcia's cellphone out the window. (Pelletier RP 842, ll. 10-12)

Near the end of December 2015 Shelby Barrett and Ricardo Orea stopped near MP 92 on I-82. Ms. Barrett had previously had an accident in this area and wanted Mr. Orea to see where it occurred. As they walked around they discovered a gun which was later turned in to law enforcement. (Pelletier RP 659, ll. 2-10; RP 661, ll. 1-11; RP 662, ll. 10-20; RP 671, l. 25 to RP 672, l. 2; RP 674, ll. 8-14)

Officer Riley recovered the gun from Ms. Barrett and Mr. Orea. The gun was sent to the Washington State Patrol Crime Lab (WSPCL). Testing conducted at the WSPCL determined that the gun recovered was the weapon used to shoot Ms. Garcia. (Pelletier RP 737, ll. 19-21; RP 741, ll. 1-5; RP 981, ll. 8-14; RP 1010, ll. 3-11)

An autopsy was performed by Dr. Menchel. He located a gunshot wound on Ms. Garcia's right side with a muzzle imprint. The wound was a perforating wound and the bullet entered and exited Ms. Garcia's body. (Pelletier RP 875, ll. 9-10; RP 881, ll. 7-15; RP 884, ll. 16-24)

Dr. Menchel also located a second wound which was a grazing wound across Ms. Garcia's back. (Pelletier RP 893, ll. 7-19)

The bullet that went through Ms. Garcia's body damaged her liver, spleen and kidney. She bled out. (Pelletier RP 900, ll. 15-21; RP 901, 5-9; ll. 13-23; RP 902, ll. 2-9; ll. 24-25)

Mr. Munoz Quintero turned himself into the Benton County Jail the next day. He was interviewed by Detectives Santoy and Todd. *Miranda*<sup>1</sup> rights were given. However, the detectives assumed that Mr. Munoz Quintero was a U.S. citizen, when in fact he was born in Mexico. Consular warnings were not given. (Pelletier RP 24, ll. 1-3; ll. 16-18; RP 43, ll. 24-25; RP 50, l. 8 to RP 51, l. 3; RP 68, ll. 5-21; RP 72, ll. 14-16; RP 84, l. 13 to RP 85, l. 6; RP 90, ll. 10-19)

An Information was filed on December 30, 2015 charging Mr. Munoz Quintero with second degree felony murder. The Information included a firearm enhancement and several domestic violence enhancements. (CP 3)

An Amended Information was filed on February 3, 2016 adding an additional enhancement. (CP 24)

A jury trial was originally scheduled for February 16, 2016. Mr. Munoz Quintero waived his time-for-trial right and the trial was rescheduled to May 16, 2016. (CP 6; CP 26)

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed.2d 694 (1966)

A CrR 3.5 Motion was filed on behalf of Mr. Munoz Quintero. An Amended Motion was subsequently filed. The motion was based upon the failure to provide Mr. Munoz Quintero with his counselor rights. The trial court entered its Findings of Fact and Conclusions of Law on May 3, 2016 denying the motion. (CP 31; CP 62; CP 113)

The State filed an ER 404(b) motion concerning prior acts of domestic violence. Following a hearing the trial court entered its Findings of Fact and Conclusions of Law allowing the admission of four (4) prior domestic violence offenses. (CP 108; CP 167)

A jury determined that Mr. Munoz Quintero was guilty of second degree felony murder. It answered yes to each of the special verdict forms involving the enhancements. (CP 1309; CP 1310; CP 1311; CP 1312; CP 1313)

Judgment and Sentence was entered on June 20, 2016. Mr. Munoz Quintero filed his Notice of Appeal the same date. The trial court didn't enter its Findings of Fact and Conclusions of Law relating to an exceptional sentence until November 28, 2016. (CP 1330; CP 1347; CP 1350)

The trial court entered a domestic violence no-contact order in conjunction with the Judgment and Sentence. The no-contact order pertained to A.M. Numerous checkmarks were included on paragraph 2 involving

“parent of a common child,” “current or former cohabitant as intimate partner,” and “current or former dating relationship.” (CP 1352)

The no-contact order also made a finding that Mr. Munoz Quintero “used, displayed, ... a firearm ... in a felony.”

Finally, the no-contact order was for life. (CP 1353)

The discussion concerning the domestic violence no-contact order was held at the end of the sentencing hearing. Defense counsel opposed imposition of that order. (Lang RP 82, l. 8 to RP 85, l. 5)

#### **SUMMARY OF ARGUMENT**

The trial court committed reversible error when it imposed a lifetime no-contact order between Mr. Munoz Quintero and his daughter. Mr. Munoz Quintero has a fundamental constitutional right to parent.

The trial court’s analysis does not properly consider all of the necessary factors pertaining to imposition of no-contact orders between a parent and child.

## ARGUMENT

“Washington law recognizes that the State has a compelling interest in protecting children from witnessing domestic violence.” *Personal Restraint of Rainey*, 168 Wn.2d 367, 378, 229 P.3d 686 (2010).

However, before a no-contact order can be entered involving a parent and child a court must analyze all of the necessary factors to determine whether or not a compelling interest overrides the parent’s fundamental constitutional right to parent.

As the *Rainey* Court noted at 381:

The duration and scope of a no-contact order are interrelated: a no-contact order imposed for a month or a year is far less draconian than one imposed for several years or life. Also, what is reasonably necessary to protect the State’s interests may change over time. Therefore, the command that restrictions on fundamental rights be sensitively imposed is not satisfied merely because, at some point and for some duration, the restriction is reasonably necessary to serve the State’s interests. The restriction’s length must also be reasonably necessary.

The trial court was concerned since A.M. was present when Mr. Munoz Quintero shot her mother. A.M. was in a car seat in the rear seat of the car. It is unknown whether she was awake or asleep at the time. It is

unknown whether she was aware of what happened to her mother at that time.

A.M. has now lost both her mother and her father based upon the entry of the no-contact order.

There is no dispute that this was an act of domestic violence.

There is no dispute that A.M. will never see her mother again.

However, to also deprive her of her father for her lifetime is untenable.

Parents have a fundamental liberty interest in the care, custody, and control of their children. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed.2d 599 (1982). A court may impose a condition on a criminal sentence that restricts a fundamental right to parent if the condition is reasonably necessary to prevent harm to a child. *State v. Ancira*, 107 Wn. App. 650, 654, 27 P.3d 1246 (2001). “Prevention of harm to children is a compelling state’s interest, and the State does have an obligation to intervene and protect a child when a parent’s ‘actions or decisions seriously conflict with the physical or mental health of the child’” *Id.* At 653-54 ....

*State v. Cortes-Aguilar*, 176 Wn. App. 264, 277, 308 P.3d 778 (2013).

There is no indication in the record that Mr. Munoz Quintero ever harmed his daughter.

There is no indication in the record of what impact these facts had upon a two-year-old.

There is no indication in the record that what Mr. Munoz Quintero did adversely affected his daughter's mental or physical well-being.

The most recent pronouncement on the fundamental right to parent is set forth in *State v. Howard*, 182 Wn. App. 91, 101-02, 328 P.3d 969 (2014). The *Howard* Court noted:

Reviewing courts must analyze the scope and duration of no contact orders in light of the facts in the record.

...

**The trial court did not give an explanation as to why a lifetime no contact order was necessary to accomplish the State's interest in protecting Mr. Howard's children, other than generally recognizing the impact on the children when Mr. Howard discharged his weapon.** Even so, we can discern from the record that a no contact order against Mr. Howard's children is needed to protect their emotional welfare while they remain young. The children witnessed the attempted murder of their mother. This action seriously conflicts with the mental health of the children.

However, **much like *Rainey* we cannot discern from the record the reason for a lifetime no-contact order. Mr. Howard did not attempt to harm the children in the assault. Nor did the State indicate that the no-contact order was needed to protect the children from physical harm.** Instead, the facts suggest that the scope of the order may be more than reasonably necessary to protect

**the children's welfare.... Remand is necessary for the trial court to address the parameters of the no-contact order and sensitively impose a condition that is reasonably necessary to protect the... children.**

(Emphasis supplied.)

## CONCLUSION

The lifetime no-contact order between Mr. Munoz-Quintero and his daughter deprives him of his fundamental constitutional right to parent.

The trial court failed to properly analyze the imposition of a lifetime no-contact order. The case needs to be remanded for purposes of imposing a reasonable period of time for the no-contact order.

In the absence of any factual predicates to support that A.M.'s emotional, mental, or physical well-being has been impacted by domestic violence a more reasonable time frame is required to allow A.M. to reach the age when she can make a decision on whether or not she wants future contact with her father.

/

DATED this 3rd day of June, 2017.

Respectfully submitted,

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

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## **APPENDIX "A"**

JUN 20 2016  
FILED *72*

SUPERIOR COURT OF WASHINGTON  
COUNTY OF BENTON

STATE OF WASHINGTON,

NO. 15-1-01427-1

Plaintiff,

**DOMESTIC VIOLENCE NO-CONTACT  
ORDER**

v.

(*Felony*)

FRANCISCO JAVIER MUNOZ QUINTERO,

(clj = NOCON)

SID: WA28235578

(superior cts = ORNC)

If no SID, use DOB: 10/30/1995,

Defendant.

Post Conviction

Clerk's Action Required

ORIGINAL

1. Based upon the certificate of probable cause and/or other documents contained in the case record, testimony, and the statements of counsel, the court finds that the defendant has been charged with, arrested for, or convicted of a domestic violence offense, and further finds that to prevent possible recurrence of violence, the Domestic Violence No-Contact Order shall be entered pursuant to chapter 10.99 RCW. This order protects:

A. M. (02/19/2014)

(RCW 7.69.A.030)

2. The court further finds that the defendant's relationship to a person protected by this order is:  current or former spouse  parent of a common child  current or former cohabitant as intimate partner  current or former dating relationship  other family or household member as defined in RCW 10.99.

3. The court makes the following findings pursuant to RCW 9.41.800:  the defendant used, displayed, or threatened to use a firearm or other dangerous weapon in a felony;  the defendant previously committed an offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040; or  possession of a firearm or other dangerous weapon by the defendant presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

**IT IS ORDERED:**

Defendant is **RESTRAINED** from:

A. Causing or attempting to cause physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking the protected person(s).

B. Coming near and from having any contact whatsoever, in person or through others, by phone, mail or any means, directly or indirectly, except for mailing or service of process of court documents by a 3<sup>rd</sup> party or contact by defendant's lawyers with the protected person(s).

C. Entering or knowingly coming within or knowingly remaining within 500 FEET (distance) of the protected person'(s)  residence  school  place of employment  
 other: \_\_\_\_\_

D. Obtaining, owning, possessing or controlling a firearm.

**IT IS FURTHER ORDERED:**

[x] The defendant shall immediately surrender all firearms and other dangerous weapons within the defendant's possession or control and any concealed pistol license to:

**WARNINGS TO THE DEFENDANT:** Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

Willful violation of this order is punishable under RCW 26.50.110. Violation of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if the defendant has at least two previous convictions for violating a protection order issued under Titles 7, 10, 26 or 74.

If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, the defendant may be subject to criminal prosecution in federal court under 18 U.S.C. § 2261, 2261A, or 2262.

In addition to the state and federal prohibitions against possessing a firearm upon conviction of a felony or a qualifying misdemeanor, upon the court issuing a no-contact order after a hearing at which the defendant had an opportunity to participate, the defendant, if a spouse or former spouse, a parent of a common child, or a current or former cohabitant as intimate partner of a person protected by this order, may not possess a firearm or ammunition for as long as the no-contact order is in effect. 18 U.S.C. § 922(g). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. If the defendant is convicted of an offense of domestic violence, the defendant will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9.41.040.

**You can be Arrested even if the Person or Persons who Obtained the Order Invite or Allow You to Violate the Order's Prohibitions.** You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall forward a copy of this order on or before the next judicial day to: **Kennewick Police Department**, where the case is filed, which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

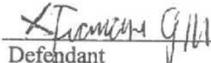
**The term of this No-Contact Order is for LIFE.**

DONE IN OPEN COURT in the presence of the defendant this date: June 20, 2016.

  
JUDGE JACQUELINE J. SHEA BROWN

  
Prosecuting Attorney  
**ANDY MILLER**, WSBA #10817  
OFC ID #91004

Attorney(s) for Defendant  
**ALEXANDRIA K. SHERIDAN**,  
WSBA #40058

  
Defendant  
**FRANCISCO JAVIER MUNOZ  
QUINTERO**

\_\_\_\_\_  
**SCOTT W. JOHNSON**,  
WSBA #27839

A LAW ENFORCEMENT INFORMATION SHEET (LEIS) MUST BE COMPLETED.

**NO. 34512-2-III**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	BENTON COUNTY
Plaintiff,	)	NO. 15 1 01427 1
Respondent,	)	
	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
FRANCISCO J. MUNOZ QUINTERO,	)	
	)	
Defendant,	)	
Appellant.	)	
_____	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 3rd day of June, 2017, I caused a true and correct copy of the *BRIEF OF APPELLANT* to be served on:

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Benton, WA 99201

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CERTIFICATE OF SERVICE

BENTON COUNTY PROSECUTOR'S OFFICE

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FRANCISCO J. MUNOZ QUINTERO #391946

U.S. MAIL

Washington State Penitentiary  
1313 N 13<sup>th</sup> Ave  
Walla Walla, WA 99362

s/ Dennis W. Morgan  
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NO. 34512-2-III  
COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**FRANCISCO J. MUNOZ QUINTERO,**

Defendant/Appellant.

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**ADDITIONAL STATEMENT OF AUTHORITIES**

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Attorney for Appellant  
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COMES NOW, FRANCISCO J. MUNOZ QUINTERO, by and through the undersigned attorney, and requests the Court to consider the following additional authorities in connection with his appeal:

*State v. Torres*, 198 Wn. App. 685 (2017)  
(In considering whether to impose on a convicted defendant a crime related condition prohibiting contact with his or her own child, a court should take into consideration the legislative directive of RCW 26.50.060 (2) that a parent-child no-contact order last no longer than one year.)

DATED this 28th day of June, 2017.

Respectfully submitted,

s/ Dennis W. Morgan

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**NO. 34512-2-III**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	BENTON COUNTY
Plaintiff,	)	NO. 15 1 01427 1
Respondent,	)	
	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
FRANCISCO J. MUNOZ QUINTERO,	)	
	)	
Defendant,	)	
Appellant.	)	
_____	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 28th day of June, 2017, I caused a true and correct copy of the *Additional Statement of Authorities* and to be served on:

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**June 28, 2017 - 9:23 AM**

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