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SUPREME COURT NO. 94457-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

JOAQUIN GARCIA,

Petitioner.

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

The Honorable Timothy Bradshaw, Judge

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SUPPLEMENTAL BRIEF OF PETITIONER

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A. ISSUES PRESENTED

Under RCW 9.41.047(1)(a) “[a]t the time a person is convicted . . . of an offense making the person ineligible to possess a firearm . . . the [convicting court] shall notify the person, orally and in writing, that the person . . . may not possess a firearm unless his or her right to do so is restored by a court of record.” This Court has held that where a convicting court has failed to give the notice directed in RCW 9.41.047(1),<sup>1</sup> and there is no evidence that the person has otherwise acquired knowledge of or notice of the firearm possession prohibition, the person may not be subsequently convicted of unlawful possession of a firearm (UPFA) based on that offense.<sup>2</sup>

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<sup>1</sup> The pertinent statutory language has remained unchanged since 1994. See former RCW 9.41.047(1) (1994); Laws of 1994, 1st Spec. Sess. ch. 7, § 404 (eff. July 1, 1994). However, in 2011, RCW 9.41.047(1) was redesignated as RCW 9.41.047(1)(a). Laws of 2011, ch. 193, §2.

As for the unlawful possession statute, RCW 9.41.040 was also adopted in roughly its current form in 1994. At the time, it was a class C felony. Laws of 1994, 1st Spec. Sess. ch. 7, § 402, eff. July 1, 1994. But the statute has undergone substantial changes. For example, the crime was divided into degrees in 1995, with “first degree” UPFA assigned class B felony status. Laws of 1995, ch. 129, §6 (Initiative Measure No. 159, eff. July 23, 1995); former RCW 9.41.040(2) (1995).

<sup>2</sup> See State v. Breitung, 173 Wn.2d 393, 404, 267 P.3d 1012 (2011) (reversing firearm conviction where Breitung did not receive notice required by statute and “[t]he State did not establish that Breitung *otherwise* had knowledge of the law or notice of the firearm prohibition”) (emphasis added); see also State v. Breitung, 155 Wn. App. 606, 624, 230 P.3d 614 (2010) (“[W]e hold that where a convicting court has failed to give the mandatory notice directed in RCW 9.41.047(1) and there is no evidence that the defendant has otherwise acquired actual knowledge

The petitioner was charged with first degree UPFA based on a single predicate conviction, a 1994 juvenile adjudication when he was 13 years old. There is no available evidence that the juvenile court provided him oral or written notice of the firearm prohibition. Similarly, there is no available evidence that he “otherwise” received notice at, or around, the time of the adjudication. The trial court dismissed the charge, and the State appealed.

1. Because lack of notice in this context does not act as a true affirmative defense, where there were no disputed material facts, did the trial court correctly conclude that the first degree UPFA charge in this case should be dismissed before trial?

2. Where a convicted person does not receive oral *or* written notice as required by statute at the time of conviction, must any notice that he “otherwise” received be obtained at least roughly contemporaneously to the conviction? In other words, does notice received several years later suffice?

B. STATEMENT OF THE CASE

1. Predicate offense and subsequent offenses

In October 1994, when Garcia was 13 years old, he pleaded guilty to first degree rape of a child based on digital contact with his younger sister.

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of the firearm possession prohibition . . . the defendant’s subsequent conviction for unlawful possession of a firearm . . . must be reversed.”), aff’d, 173 Wn.2d 393, 267 P.3d 1012 (2011).

CP 24, 32; RCW 9A.44.073. CP 38. Garcia was himself the victim of long-term sexual abuse by his biological father starting when he was just four years old. CP 169-70, 174-75.

RCW 9.41.047(1)(a), which requires a convicting court to notify a person orally *and* in writing when a conviction makes that person ineligible to possess a firearm, had gone into effect only a few months before the plea. Laws of 1994, 1st Spec. Sess. ch. 7, § 404 (eff. July 1, 1994). But the superior court record relating to the adjudication contains no record of oral *or* written notice to Garcia. See CP 140-64 (court documents related to adjudication, including “Statement of Juvenile Offender on Plea of Guilty and Dispositional Order,” attached as Appendix B to State’s Response to Defense Motion (“State’s Response”)); see also RP 26-27 (acknowledgment by State that entire record related to adjudication had been provided to trial court); CP 81 (acknowledgment, in State’s Response, that neither audio recording nor other record of plea hearing, sentencing hearing, or Special Sex Offender Disposition Alternative revocation proceedings were available).

Four years after the first plea, Garcia pleaded guilty to a second felony, second degree UPFA.<sup>3</sup> However, the basis for the plea was

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<sup>3</sup> Although Garcia was 17, that plea was entered in adult court. CP 220.

possession of a firearm when Garcia was less than 18 years old. CP 229 (Statement of Defendant on Plea of Guilty, listing elements of charged crime as “knowingly and unlawfully possess[ing] a firearm while under the age of 18”);<sup>4</sup> former RCW 9.41.040(1)(b)(iii) (1997).

Corresponding to that conviction, Garcia received written notice that he was ineligible to possess a firearm. CP 226, 233. He also received similar notice as to several subsequent convictions. E.g. CP 262-63. However, it is undisputed that the only conviction qualifying him for first degree UPFA was the 1994 juvenile adjudication. E.g. CP 48 (listing predicate offenses for second degree charge); RP 81.

## 2. Current charges

In November of 2014, the State charged Garcia with first degree UPFA, with the 1994 conviction as the sole predicate offense (count 1). CP 1-2, 46 (original and amended charging documents). The State also charged

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<sup>4</sup> Garcia’s statement “in his own words” reads as follows:

On July 16, 1998, in Pierce County, I was 17 years old [scratched out word] knowingly had a gun in my possession. I did not have a lawful reason to have the gun. I was also convicted of a felony in 1994.

CP 233. The State argued in the Court of Appeals that this statement indicates it is unclear under which prong of second degree UPFA Garcia pleaded guilty. BOA at 8 n. 5. But this argument ignored the charge as set forth at CP 229. The State now appears to have retreated from its initial position. See Supplemental Brief of Respondent at 7 n. 5 (appearing to acknowledge Garcia pleaded to illegal possession based on age).

Garcia with felony harassment – domestic violence, witness tampering, two counts of misdemeanor violation of a court order – domestic violence, and, relying on Garcia’s other prior convictions, second degree UPFA (count 6). CP 46-48.

First degree UPFA, count 1, is a class B felony, with a statutory maximum sentence of 10 years, whereas second degree UPFA, count 6, is a class C felony, with a statutory maximum of five years. RCW 9A.10.040(1)(b), (2)(c); RCW 9A.20.020(1).

3. Trial court’s pretrial dismissal of first degree firearm charge

Garcia moved to dismiss the first degree UPFA charge on the ground that he never received the required notice under RCW 9A.10.047(1)(a) as to that charge. CP 20-22. He also filed a declaration stating that his attorney at the time never alerted him to any firearm prohibition. CP 80.

The trial court agreed and dismissed the charge. RP 59-62 (oral ruling); RP 71-76 (oral ruling denying State’s motion to reconsider ruling); CP 537 (order dismissing); CP 541-43 (written findings).

The trial court’s written findings stated that, as to Garcia’s 1994 conviction, he did not receive oral or written notice as mandated by statute. CP 541. In making this finding, the court relied on the juvenile case file, which the parties appeared to agree was the “entire universe of existing

evidence” concerning the 1994 adjudication, including the notices the court provided to Garcia at that time. CP 542; see also RP 60 (court’s oral ruling, observing that parties agreed regarding the existing record as to the 1994 conviction); see also RP 26-27 (State’s acknowledgment that recordings of any related court hearing had been destroyed).

In reaching its decision, the trial court distinguished, on its facts, a decision from Division One of the Court of Appeals, State v. Mitchell.<sup>5</sup> Rather, the trial court found Garcia’s case was more like this Court’s decision in State v. Breitung, 173 Wn.2d 393. Like Garcia, Breitung had not received the notice required by statute. CP 542. The court rejected the State’s argument that Garcia’s subsequent convictions were sufficient to establish Garcia had “otherwise”<sup>6</sup> obtained knowledge of the firearm prohibition. The superior court observed that, consistent with Breitung, the notification requirement could not be satisfied by information obtained long after the time of the predicate conviction. CP 542.

The trial court dismissed count 1. CP 537, 541-43. The court ruled, however, that the dismissal order was appealable of right under RAP 2.2(b)(1) as a final judgment. But the court stayed the case pending the

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<sup>5</sup> State v. Mitchell, 190 Wn. App. 919, 361 P.3d 205 (2015), review denied, 185 Wn.2d 1024 (2016). Mitchell is discussed below.

<sup>6</sup> Breitung, 173 Wn.2d at 402, 404.

State's appeal. CP 549-50. Garcia, who has not yet been tried, remains incarcerated. CP 548.

4. State's appeal of dismissal and Court of Appeals decision reversing trial court

The State appealed. Division One of Court of Appeals reversed the trial court, holding that the trial court was not permitted to rule on an affirmative defense on a pretrial motion. State v. Joaquin Garcia, 198 Wn. App. 527, 533, 393 P.3d 1243 (2017). Moreover, the trial court should not have precluded the State from presenting "other evidence of [Garcia's] actual knowledge of the law or the firearm prohibition." Id. at 535-36.

On October 5, 2017, this Court accepted review.

C. ARGUMENT

THE TRIAL COURT CORRECTLY DISMISSED THE FIRST DEGREE UNLAWFUL POSSESSION CHARGE.

Under this Court's Breitung decision, pretrial dismissal of a UPFA charge is an appropriate remedy where there is no dispute that the State has failed to notify a person orally *and* in writing of a firearm prohibition, and there is no dispute regarding the evidence, or lack of evidence, that could support that the person "otherwise" obtained knowledge of or notice of the firearm prohibition. The trial court correctly found the State could not prove Garcia received notice as to the sole charge that subjected him to the

enhanced penalties of the first degree charge. This Court should reverse the Court of Appeals and reinstate the trial court's order of dismissal.

1. Introduction to applicable law

Before the start of trial, an accused person may “move to dismiss a criminal charge due to insufficient evidence establishing a prima facie case of the crime charged.” CrR 8.3(c). This process is essentially a summary judgment procedure “to avoid a trial when all the material facts are not genuinely in issue and could not legally support a judgment of guilt.” State v. Horton, 195 Wn. App. 202, 217-18, 380 P.3d 608 (2016) (quoting State v. Freigang, 115 Wn. App. 496, 501, 61 P.3d 343 (2002)). The procedure is intended to promote “[f]airness and judicial efficiency” when it is clear the State cannot prove the elements of the crime. State v. Knapstad, 107 Wn.2d 346, 349, 729 P.2d 48 (1986).

A person commits first degree UPFA “if the person owns, has in his . . . possession, or has in his . . . control any firearm after having previously been convicted in this state or elsewhere of any serious offense as defined in this chapter.” Former RCW 9.41.040(1)(a) (2014). A first degree child rape conviction arguably qualifies as a “[c]rime of violence,” which is included within the definition of a “serious offense” for purposes of first degree UPFA. Former RCW 9.41.010(3)(a)-(b), (18)(a); RCW 9A.44.073.

But RCW 9.41.047(1)(a) unambiguously requires a convicting court to give the convicted person notice of the ensuing prohibition on the right to possess firearms. The statute provides that

*[a]t the time a person is convicted . . . of an offense making the person ineligible to possess a firearm . . . the [convicting court] shall notify the person, orally and in writing, that the person . . . may not possess a firearm unless his . . . right to do so is restored by a court of record:*

RCW 9.41.047(1)(a) (emphasis added).

Although RCW 9.41.047 does not expressly provide a remedy for a convicting court's violation of its terms, this Court has fashioned a remedy for such a violation. Twice in the last 10 years, this Court has reversed convictions for UPFA based on lower courts' failure to comply with the statute. Breitung, 173 Wn.2d at 401; State v. Minor, 162 Wn.2d 796, 174 P.3d 1162 (2008). As this Court stated, "ignorance of the law is generally not a defense." Breitung, 173 Wn.2d at 402. But, "failure to provide a remedy for what is a clear statutory violation of RCW 9.41.047(1) ignores the statute's mandate and deprives the statute of any real bite." Breitung, 173 Wn.2d at 402. Thus, a defendant cannot be convicted of UPFA unless the State can show he was provided notice of the firearm prohibition.

2. Based on *Breitung*, pretrial dismissal is an appropriate remedy where there are no disputed facts

The Breitung “affirmative defense,” while referred to as such, is not a true “affirmative defense.” Consistent with Breitung, pretrial dismissal of a UPFA charge is an appropriate remedy where there is no dispute that the State has failed to notify a person orally *and* in writing, and there is no dispute that evidence that could support that the defendant “otherwise” received knowledge of the firearm prohibition is absent as well.<sup>7</sup>

Although the Court of Appeals found pretrial dismissal was not an appropriate remedy, this Court’s decision Breitung itself establishes that it is. Regarding the procedural posture of that case, this Court stated that

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<sup>7</sup> The State asserted in its answer to Garcia’s petition for review (Answer) that Garcia argued for the first time in the petition that the Breitung defense does not act as a “garden variety” affirmative defense. Answer at page 4 n. 1. Thus, the State appeared to argue, this Court should not consider this argument. The State continues to hint at this line of argument in its supplemental brief.

However, Garcia, the respondent below, made the same Breitung-based argument at pages 11-12 of the Brief of Respondent (BOR). See also [http://www.courts.wa.gov/appellate\\_trial\\_courts/appellateDockets/index.cfm?fa=appellateDockets.showOralArgAudioList&courtId=a01&docketDate=20170222](http://www.courts.wa.gov/appellate_trial_courts/appellateDockets/index.cfm?fa=appellateDockets.showOralArgAudioList&courtId=a01&docketDate=20170222), 1. State v. Garcia 747797, at approx. 8:27-10:44 (last accessed Oct. 24, 2017) (articulating same argument at oral argument in the Court of Appeals).

The Court of Appeals addressed the argument, albeit in a passing fashion. Garcia, 198 Wn. App. at 536 (“Even if the trial court could decide an affirmative defense as a matter of law pretrial, it erred in doing so here.”). But, in the event this Court somehow finds the foregoing inadequate, this Court may affirm a lower court’s ruling on any grounds adequately supported in the record. In re Marriage of Rideout, 150 Wn.2d 337, 358, 77 P.3d 1174 (2003). As the record is clear and this case presents legal issues, it would be appropriate to do so in this case.

In his . . . motion to dismiss the unlawful possession of firearms charge, Breitung affirmatively established that the municipal court failed to notify him of his firearm prohibition as required by RCW 9.41.047(1). Importantly, the statute requires both written and oral notice. The State did not argue or establish that Breitung received oral notice from the court, and no evidence of oral notification appears in the record. “[B]ecause the record is silent on oral notification, the assumption is no such notice was given.” Minor, 162 Wn.2d at 800. Nor did Breitung receive written notice in the 1997 court order. The judgment and sentence notified Breitung he must “[h]ave law abiding behavior,” [and] “[h]ave no similar incidents,” . . . . It did not, in any way, mention firearms or firearm prohibition.

Breitung, 173 Wn.2d at 403-04 (first, second, and fourth alterations in original). In addition, the State did not establish that Breitung “otherwise had knowledge of the law or notice of the firearm prohibition.” Id. at 404. Under the circumstances, this Court reversed the trial court’s denial of a motion to dismiss. Id.

This Court referred to the defense as an “affirmative defense.” Generally, a defendant bears the burden of proving an affirmative defense by a preponderance of the evidence. State v. Deer, 175 Wn.2d 725, 734, 287 P.3d 539 (2012). But Breitung represents a break from the maxim that ignorance of the law is no excuse. Plainly stated, to honor the strict notice requirement of RCW 9.41.047(1)(a), ignorance of the law *is* the excuse. Indeed, following Breitung, a defendant cannot be convicted of UPFA

unless *the State* can prove he was provided notice. Breitung, 173 Wn.2d at 403-04.

The State relies heavily on State v. Fisher, 185 Wn.2d 836, 374 P.3d 1185 (2016) to argue that the procedure employed by the trial court was improper. In Fisher, this Court held that “a defendant may use any evidence presented at trial, regardless of the party which presented it, . . . to satisfy her burden of production for an affirmative defense instruction. A defendant may not, however, point to an absence of evidence.” Id. at 851.

Yet, as this language from Fisher shows, lack of notice cannot be treated as a garden variety affirmative defense. Because Breitung makes it clear that the State has the burden to prove knowledge, 173 Wn.2d at 402-03, it makes little sense to shift the burden back to Garcia. Cf. State v. Carter, 127 Wn. App. 713, 717, 112 P.3d 561 (2005) (unwitting possession instruction, placing burden on the accused, was improper because State had burden to prove knowing possession (citing State v. Anderson, 141 Wn.2d 357, 366, 5 P.3d 1247 (2000)), overruled on other grounds by Breitung, 173 Wn.2d 393.

As Garcia argued below, Breitung itself supplies the authority for a pretrial motion to dismiss.

The Court of Appeals disagreed. The Court of Appeals noted that here, the trial court *granted* the motion to dismiss, whereas in Breitung, it

was denied, and then later reversed. Garcia, 198 Wn. App. at 533 n. 2. But this is a distinction without a difference. Where there is no disputed fact of consequence, denying the remedy of pretrial dismissal makes little sense and runs contrary to the policy reasons supporting pretrial dismissal. See Knapstad, 107 Wn.2d at 349 (pretrial dismissal promotes “[f]airness and judicial efficiency” when it is clear the State cannot meet its burden).

In summary, the Breitung defense does not operate as a garden variety affirmative defense. Because there were no disputed facts of consequence, the court correctly ruled that, under Breitung, dismissal was the appropriate remedy. See Horton, 195 Wn. App. at 217-18 (Criminal Rule 8.3(c) allows for dismissal of charge where there are no material disputed facts, and the undisputed facts do not establish a prima facie case of guilt).

3. Dismissal was appropriate because there was no dispute as to the facts during the pertinent time period.

Because pretrial dismissal is, consistent with Breitung, an available remedy, this leads to a second question: Were there disputed material facts in this case that the court’s ruling prevented the State from presenting? The answer depends on what can be considered the relevant time period during which a convicted person may receive notice under statute.

- a. *Whether there were disputed facts depends on a legal question: What is the pertinent time period during which notice must be provided?*

Whether there were disputed facts boils down to a legal question. In determining that there were facts supporting that Garcia “otherwise” obtained knowledge, the Court of Appeals’ opinion points to evidence suggesting Garcia knew about a prohibition several years after the sole predicate conviction. Garcia, 198 Wn. App. at 535-36. But, as Garcia argued below, that was too late. Whether it was too late is a legal question. See State v. Vasquez, 109 Wn. App. 310, 318, 34 P.3d 1255 (2001) (whether certain facts are relevant to a legal determination is itself a legal question, which this Court reviews de novo), aff’d, 148 Wn.2d 303, 59 P.3d 648 (2002).

In the answer to the petition for review, the State continued to assert the existence of “hotly” disputed facts. Answer at 3; see also Supplemental Brief of Respondent at 9. However, if notice must be roughly contemporaneous to the conviction (a legal question) there are no disputed facts. See CP 542 (trial court based its findings on the juvenile case file, which the parties appeared to agree was the “entire universe of existing evidence” concerning the 1994 adjudication, including the notices the court provided to Garcia at that time); RP 60 (court’s oral ruling, observing that parties agreed regarding the existing record as to the 1994 conviction); RP

26-27 (State's acknowledgment that recordings of any related court hearing had been destroyed).

As Garcia argued in the Court of Appeals, the knowledge or notice he "otherwise" received must be contemporaneous to the predicate conviction or adjudication. The State never advanced evidence suggesting that contemporaneous to, or even roughly contemporaneous to, his adjudication, Garcia "otherwise" obtained knowledge or notice that his juvenile conviction prevented him from possessing a firearm.

- b. *Under the applicable statute and this Court's prior case law, the pertinent time period for statutory notice is contemporaneous to, or at least roughly contemporaneous to, the predicate conviction.*

Minor and Breitung, as well as RCW 9.41.047(1)(a) itself, establish that the "otherwise" knowledge or notice must be contemporaneous to the predicate conviction or adjudication.

In Minor, the defendant was charged with first degree UPFA. The predicate offense court had failed to give oral and written notice to Minor, who was then just 15, that his firearm rights had been rescinded. Minor, 162 Wn.2d at 797. Indeed, the dispositional order included the required language, but the box next to that language was left unchecked, suggesting that the firearm prohibition did not apply. Id. at 797-98. This Court held

“[t]he only remedy appropriate for the statutory violation is to reverse the current conviction.” Id. at 804.

This Court highlighted the legislature’s concern over interfering with the right to possess and use firearms. “[I]n enacting [RCW 9.41.047(1)], the legislature balanced the concern with escalating violence, which some commentators blamed on the ‘ready availability of firearms,’ with the concern that restricting firearm availability will infringe upon the right of a law-abiding citizen to keep and bear arms.” Minor, 162 Wn.2d at 803 (quoting Final B. Rep. on Engrossed Second Substitute H.B. 2319, at 2, 53d Leg., Reg. Sess. (Wash. 1994)). RCW 9.41.047(1) nonetheless “require[d] the convicting court to provide oral *and* written notice. *The statute is unequivocal in its mandate.*” Minor, 162 Wn.2d at 803 (emphasis added).

While RCW 9.41.047(1) did not specify a remedy for a violation, “[t]he presence of a notice requirement shows the legislature regarded such notice of deprivation of firearms rights as substantial. Relief consistent with the purpose of the statutory requirement *must* be available where the statute has been violated.” Minor, 162 Wn.2d at 803-04 (emphasis added).

Three years later, this Court expanded its Minor ruling in Breitung, answering questions left open by Minor and reemphasizing this Court’s strict adherence to the language of former RCW 9.41.047(1).

Breitung was convicted in 1997 of domestic violence assault, rendering him ineligible to possess firearms. Breitung, 173 Wn.2d at 402. The convicting court, however, failed to notify him in writing that his right to bear arms had been rescinded. This Court acknowledged, however, that the judgment and sentence was not actively misleading. Id.; cf. Minor, 162 Wn.2d at 802-03 (finding Minor was misled when dispositional order failed to indicate firearm prohibition paragraph applied to Minor).

Prior cases had held that, although ignorance of the law is generally not a defense, a narrow exception to that proposition is warranted only where the State provided affirmatively misleading information regarding the firearm prohibition. E.g. State v. Leavitt, 107 Wn. App. 361, 27 P.3d 622 (2001).

This Court nonetheless found that, following its “robust and long-standing protection of the individual right to bear arms,” the lack of statutorily required notification—“oral *and* written notice”—required reversal of Breitung’s firearm conviction, even where he had not been affirmatively misled. Breitung, 173 Wn.2d at 402-03. This Court noted, however, that such a defense could be defeated if the State could establish that a defendant “otherwise had knowledge of the law or notice of the firearm prohibition.” Id. at 404.

Breitung does not explicitly state that such knowledge or notice must be specific to the predicate conviction, nor does it state *when* such knowledge must have been obtained. But, considered in context and based on the language of the statute itself, the “otherwise” knowledge or notice must be contemporaneous to, or at least roughly contemporaneous to, the predicate conviction.

First, grounded in the constitutional right to bear arms, this Court takes the statutory notification requirement so seriously that it requires a remedy for a violation of RCW 9.41.047(1)(a), even though the statute does not explicitly provide for such a remedy. Breitung, 173 Wn.2d at 403 (“Relief consistent with the purpose of the statutory requirement *must* be available where the statute has been violated.”) (quoting Minor, 162 Wn.2d at 803-04).

Even more significantly, Breitung removed the requirement that the accused must have been affirmatively misled into believing that he or she was permitted to possess firearms. In other words, after Breitung, the primary question is whether a statutory violation has occurred, and not whether the accused was misled or subjectively believed that he or she could legally possess firearms.

Finally, the language of the pertinent statute itself suggests that, to defeat the affirmative defense, the knowledge or notice “otherwise”

received must have been obtained at the time of the conviction. RCW 9.41.047(1)(a) states that notice must be provided “[a]t the time a person is convicted.”

Considering the statutory language requiring contemporaneous notification and the primacy of the statutory requirement itself over the prior “affirmatively misled” analysis, the “otherwise” exception identified in Breitung is properly interpreted narrowly.

A narrow view of the “otherwise” language makes sense. A showing that an accused received only oral *or* written notice would not satisfy the statutory language. But it could satisfy the “otherwise” language. Cf. Mitchell, 190 Wn. App. at 929-30 (holding by Division One that Mitchell could not prove lack of notice as a matter of law; the State proved that he received written notice via his statement on plea of guilty and the record suggested he received oral notice as well). But here, as the State acknowledged, there was simply no such information available to it to meet *the State’s* burden to prove notice. CP 81 (State’s Response); RP 26-27.

As a final matter, this Court should pay no heed to the parade of horrors on display at pages 19 and 20 of the Supplemental Brief of Respondent. This case is about the remedy for a violation of RCW 9.41.047(1)(a). See Breitung, 173 Wn.2d at 403 (“Relief consistent with the purpose of the statutory requirement *must* be available where the statute

has been violated.”). The question of convictions obtained before the enactment of the statute is not before this Court.

In summary, the record of Garcia’s 1994 adjudication demonstrates he did not receive the statutorily required oral and written notice at the time of his juvenile adjudication. And there is no available evidence suggesting Garcia “otherwise” obtained knowledge of or notice of the firearm prohibition contemporaneously to or even roughly contemporaneously to his juvenile adjudication. The trial court correctly ruled that, as a matter of law, Garcia established the Breitung defense to the first degree UPFA charge. This Court should reverse the Court of Appeals and order that the dismissal order be reinstated.

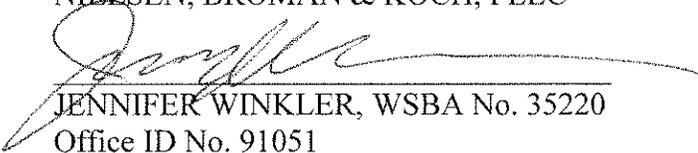
D. CONCLUSION

For the reasons stated, Garcia respectfully requests that this Court reverse the Court of Appeals and reinstate the order dismissing the charge of first degree unlawful possession of a firearm.

DATED this 15<sup>th</sup> day of November, 2017.

Respectfully submitted,

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