Supreme Court No. ____
COA No. 84824-1-I

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN MARTINEZ,

Petitioner.

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

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

Washington Cases

Other Federal Cases

Other State Cases

Washington Statutes

Rules

Constitutional Provisions

Other Authorities

A. INTRODUCTION

John Martinez, an Iraq war veteran, owned two horses: a mare and a nursing filly. He was destitute and struggled to care for himself and his horses. He went to the field to feed his horses twice daily, traveling by bike because of his economic problems. Animal Control determined Mr. Martinez could not care for his horses and seized them.

The State charged Mr. Martinez with one count of first-degree animal cruelty because he underfed the mare. At trial, the court admitted evidence the filly was also malnourished, even though Mr. Martinez was not charged with mistreating his filly.

The Court of Appeals affirmed, holding this evidence was admissible as res gestae. Ignoring this Court's precedent, the court held res gestae evidence does not implicate ER 404(b). It reasoned the evidence about the filly's health was "integral" because it suggested Mr. Martinez committed animal cruelty against the mare.

That is the definition of propensity evidence. The Court of Appeals avoided this conclusion by sidestepping ER 404(b) entirely. But simply calling evidence "res gestae" does not insulate it from the rigors of ER 404(b). This case exemplifies the evils of what the res gestae doctrine has become—a catchall theory for near-universal admissibility of propensity evidence. This Court should grant review and abolish the doctrine, as many other states have done.

The Court should also grant review to determine whether the State can disarm Mr. Martinez solely because he was convicted of animal cruelty—a non-violent felony. The Court of Appeals incorrectly held the Second Amendment does not apply to Mr. Martinez because he is not a "law-abiding citizen." Contrary to U.S. Supreme Court law, the Court of Appeals did not examine this nation's historical tradition of firearm regulation. This Court's guidance is required in this rapidly developing area of Second Amendment jurisprudence.

B. IDENTITY OF PETITIONER

John Martinez, the petitioner here and appellant below, asks this Court to accept review of the Court of Appeals' decision terminating review. RAP 13.3, 13.4.

C. COURT OF APPEALS DECISION

Mr. Martinez seeks review of the Court of Appeals' decision dated December 9, 2024, attached as an appendix.

D. ISSUES PRESENTED FOR REVIEW

1. This Court held that res gestae is an implied ER 404(b) exception. It also held that courts must examine res gestae evidence under ER 404(b). Despite that precedent, the Court of Appeals no longer assesses res gestae evidence under ER 404(b). Likewise, there is not a consistent definition of the doctrine, and there is a dearth of case law addressing how courts must examine whether evidence is "res gestae." The state of the res gestae doctrine in Washington exemplifies what many courts and commentators have said for years: the doctrine lacks

definitional coherence and results in inconsistent and unfair outcomes. This Court should grant review and abolish res gestae an independent basis for the admission of evidence. RAP 13.4(b)(1), (b)(4).

2. To be admissible as other act evidence, the evidence must be necessary to complete the picture of the charged crime, and the evidence cannot achieve a propensity inference. The Court of Appeals upheld the admission of the evidence about the malnourished filly because it demonstrated Mr. Phillips likely underfed his mare. This is the definition of propensity evidence—the admission of uncharged misconduct to demonstrate Mr. Phillips more likely than not committed the charged offense. This Court should grant review and clarify that such brazen propensity evidence is never admissible. RAP 13.4(b)(1), (b)(4).

3. Restricting the right to possess a firearm presumptively violates the Second Amendment unless the restriction is consistent with this Nation's historical

tradition. Because he was convicted of first-degree animal cruelty, RCW 9.41.040 prohibits Mr. Martinez from possessing a firearm. Mr. Martinez's conviction is neither a "serious offense," nor is it a violent felony. There is nothing in our Nation's historical tradition to indicate the State can disarm Mr. Martinez solely because he committed this offense. The Court of Appeals failed to conduct this analysis. Instead, the court incorrectly ruled the Second Amendment does not apply to Mr. Martinez because he is not a "law-abiding citizen." This Court should grant review and prevent the State from unconstitutionally disarming Mr. Martinez. RAP 13.4(b)(1), (b)(3), (b)(4).

E. STATEMENT OF THE CASE

After his military discharge, John Martinez purchased his horse, Spirit, a mare. CP 54. He then fell into hard times, becoming homeless and struggling to care for himself. RP 341. At that point, Mr. Martinez had two horses: the mare and her nursing filly. RP 201; CP 57. Mr. Martinez paid to

keep his horses in a field and provided them with feed. RP 299. Mr. Martinez rode his bike to get to the field. RP 507.

The government investigated reports that Mr. Martinez's horses were not being properly fed. RP 352. Mr. Martinez explained how he moved the horses from a different field and worked with a veterinarian to ensure the horses were in good health. RP 356. The government encouraged Mr. Martinez to surrender his horses so they could be better cared for. RP 356. Mr. Martinez was reluctant and asked for more time to think. RP 356.

The State seized both horses. RP 307-08. The State's veterinarians determined the horses were malnourished. RP 224, 409. The mare was thin and lethargic, and it struggled to eat food. RP 217, 235. The filly was also thin, but not as thin as its mother. RP 325. The day after the government took Mr. Martinez's mare, it went down, meaning the horse would not stand back up. RP 432. Shortly afterward, the government destroyed the mare. RP 448.

The State charged Mr. Martinez with first-degree animal cruelty because he underfed the mare. CP 140–45. The State did not charge Mr. Martinez for underfeeding the filly. *See* CP 140–45. Before trial, Mr. Martinez moved the court under ER 404(b) to exclude the evidence that the filly was malnourished. RP 7. The court denied his motion. RP 170.

At trial, the court admitted substantial evidence about the filly. A veterinarian testified that the malnourished mare was still nursing the filly. RP 228–29. Another veterinarian, Dr. Daniel Haskins, testified the filly was malnourished. RP 409. Dr. Haskins explained that, because both horses were malnourished, the Mr. Martinez likely caused the mare's malnourishment by not providing enough food. RP 435–36. During the prosecutor's closing argument, he reminded the jury that the "filly was also skinny." RP 503.

The jury convicted Mr. Martinez as charged. CP 67. The court imposed 30 days of incarceration. CP 41. When it

imposed his sentence, the court noted Mr. Martinez could no longer possess a firearm because of his conviction. 12/20/22 RP 13–14. Mr. Martinez had no criminal history before this conviction. 12/20/22 RP 6; CP 31.

The Court of Appeals upheld the conviction, holding the evidence about the filly's malnourishment was admissible as res gestae. Slip Op. at 10. The court also held that disarming Mr. Martinez due to the animal cruelty conviction did not violate the Second Amendment. Slip Op. at 11–14.

F. LAW AND ARGUMENT

1. The Court of Applies upheld the admission of uncharged misconduct evidence under a flawed view of the res gestae doctrine.

The evidence that Mr. Martinez inadequately fed his second horse, the nursing filly, was inadmissible under ER 404(b). This evidence was not relevant to prove a non-propensity purpose. Instead, its only effect was to

demonstrate that, because Mr. Martinez was underfeeding the filly, he was likely underfeeding the mare.

The Court of Appeals did not necessarily disagree. It found the evidence about the filly's malnourishment made it more likely that Mr. Martinez caused the malnourishment of the mare. Slip Op. at 10. This is practically the definition of a forbidden propensity inference. But the Court of Appeals still upheld the admission of the evidence under a res gestae theory, finding ER 404(b) did not apply. Slip Op. at 8–10.

This case illustrates the doctrinal incoherence of the res gestae doctrine. It lacks a consistent standard, and, because of its ambiguity, it is often used to admit prejudicial evidence without scrutiny. The Court should grant review to abolish res gestae as an independent basis for admissibility. Even if not, this Court should grant review and hold the evidence does not constitute res gestae evidence.

a. This Court should abolish the res gestae doctrine as an independent basis of evidentiary admissibility.

The use of res gestae as a standalone basis to admit uncharged misconduct evidence rests on a legally unclear footing, lacks a cogent and consistent standard, and achieves unpredictable results.

This Court has consistently characterized res gestae as an implied exception to ER 404(b). *State v. Powell*, 126 Wn.2d 244, 263, 893 P.2d 615 (1995); *State v. Tharp*, 96 Wn.2d 591, 593–95, 637 P.2d 961 (1981); *State v. Elmore*, 139 Wn.2d 250, 285–86, 985 P.2d 289 (1999); *State v. Brown*, 132 Wn.2d 529, 570–71, 940 P.2d 546 (1997); *State v. Lane*, 125 Wn.2d 825, 831, 889 P.2d 929 (1995). Under that construction, res gestae evidence must pass the same four-prong test as any other ER 404(b) evidence. *Brown*, 132 Wn.2d at 571.

Doctrinal uncertainty abounds, however. Despite the holdings of this Court, divisions of the Court of Appeals

have recharacterized the basis of res gestae. According to one division, "characterizing the res gestae rule as an exception to ER 404(b) is indefinite, is prone to abuse, and 'tends merely to obscure' ER 404(b) analysis." *State v. Grier*, 168 Wn. App. 635, 645 n.19, 278 P.3d 225 (2012) (quoting *United States v. Krezdorn*, 639 F.2d 1327, 1332 (5th Cir. 1981)). The *Grier* court held that "'res gestae' evidence more appropriately falls within ER 401's definition of 'relevant' evidence, which is generally admissible under ER 402." *Id.* at 646.

Other panels have followed suit. *State v. Sullivan*, 18 Wn. App. 2d 225, 236–37, 491 P.3d 176 (2021); *State v. Dillon*, 12 Wn. App. 2d 133, 148, 456 P.3d 1199 (2020); *State v. Briejer*, 172 Wn. App. 209, 224, 289 P.3d 698 (2012). The Court of Appeals held likewise here. Slip Op. at 8–9.

The problem with this reconceptualization is readily apparent. ER 401, 402, and 403 typically impose far "more relaxed requirements" than ER 404(b). *Briejer*, 172 Wn. App.

at 227. For example, when expressed as an exception to ER 404(b), courts tend to express that the evidence's "'probative value must outweigh its prejudicial effect.'" *Brown*, 132 Wn.2d at 571. When it is expressed under ER 401, 402, and 403, however, the prejudicial effect of the uncharged res gestae evidence must "'substantially outweigh[]'" its probative value. *Briejer*, 172 Wn. App. at 226 (quoting ER 403). This more relaxed standard can admit prejudicial evidence—even propensity evidence—that ER 404(b) would not tolerate.

"By continuing to rely on res gestae as a standalone basis for admissibility and allowing the vagueness of res gestae to persist next to these more analytically demanding rules of relevancy, we have created a breeding ground for confusion, inconsistency, and unfairness." *Rojas v. People*, 504 P.3d 296, 301 (Colo. 2022). This confusion spotlights the harmfulness of the doctrine, "because by its ambiguity it invites the confusion of one rule with another and thus

creates uncertainty as to the limitations of both." 6 John H. Wigmore, *Evidence in Trials at Common Law* § 1767 (James H. Chadbourne rev., 1976).

Aside from the unclear doctrinal underpinnings, res gestae also lacks a consistent, workable standard. The translation of the Latin phrase itself is hopelessly vague, as it literally means "things or things happened." *McCandless v. Inland Nw. Film Serv., Inc.*, 64 Wn.2d 523, 532, 392 P.2d 613 (1964). The judicial expressions of res gestae provide only slightly more clarity. *Zapata v. People*, 428 P.3d 517, 533 (Colo. 2018) (Hart, J., specially concurring) (noting that res gestae "is a vague and nearly standardless concept that is applied too expansively").

Under a typical expression of the doctrine, "evidence of other crimes or misconduct is admissible to complete the crime story by establishing the immediate time and place of its occurrence." *State v. Hughes*, 118 Wn. App. 713, 725, 77 P.3d 681 (2003). Other articulations of that standard suggest

the uncharged misconduct must be "necessary" to complete the story of the crime. *E.g., State v. Warren*, 134 Wn. App. 44, 62, 138 P.3d 1081 (2006).

Courts have also posited that res gestae evidence must constitute a "'link in the chain' of an unbroken sequence of events surrounding the charged offense[.]" *Brown*, 132 Wn.2d at 571 (quoting *Tharp*, 96 Wn.2d at 594). Even more confusingly, the evidence is also described as "a piece in the mosaic necessarily admitted in order that a complete picture be depicted for the jury." *Tharp*, 96 Wn.2d at 594. Still, at other times, the evidence is expressed as an "inseparable part[] of the whole deed or criminal scheme." *State v. Mutchler*, 53 Wn. App. 898, 901, 771 P.2d 1168 (1989).

"[B]ecause res gestae is so ill-defined, such uncharged misconduct evidence too often dodges the rules and slips into cases without the requisite scrutiny." *Rojas*, 504 P.3d at 300. The utilization of these nebulous and inconsistent

standards have resulted in capricious results throughout our case law.

This case epitomizes the problem. The Court of Appeals correctly acknowledged that the malnourishment of the filly was "seemingly unrelated to the condition of the mare." Slip Op. at 10. It nevertheless held the evidence was admissible because it provided "context" for the animal cruelty charge about the mare. Slip Op. at 10. It found the malnourishment of the filly was relevant because it demonstrated Mr. Martinez had two malnourished horses, and thus the malnourishment of the mare was likely due to starvation and not a different, innocuous reason. Slip Op. at 10.

In other words, the court held that, because the filly was *also* malnourished, it made it more likely that Mr. Martinez was underfeeding the mare, i.e., guilty of animal cruelty. This is practically the definition of propensity evidence. It is evidence that demonstrates Mr. Martinez's

propensity for underfeeding his animals, which made it more likely he underfed his mare. *See State v. Crossguns*, 199 Wn.2d 282, 292, 505 P.3d 529 (2022).

By summarily upholding the admission of this propensity inference, the Court of Appeals' holding exemplifies the evils of the res gestae doctrine. "Not only is the doctrine vague, it's harmful. Because of its ambiguity, res gestae—which was never more than a theory of relevance—is more often treated as a theory for near-universal admissibility. The doctrine invites truncated analysis." *Rojas*, 504 P.3d at 306 (internal citation omitted). Likewise, "The 'completing the story' rationale to admit other-acts evidence 'create[s] the greatest risk of subverting the limitations that ought to apply whenever the jury is informed of a person's uncharged wrongdoing.'" *Id.* at 307 (quoting David P. Leonard, *New Wigmore on Evidence: Evidence of Other Misconduct* § 5.3.2 (2d ed. Supp. 2020)).

Beyond being vague and harmful, res gestae is also unnecessary. "[E]very rule of evidence to which it has ever been applied exists as a part of some other well-established principle and can be explained in the terms of that principle." 6 Wigmore, *Evidence* § 1767.

Recognizing these flaws, a growing number of states have abolished the doctrine. *E.g., Rojas*, 504 P.3d at 307; *State v. Lake*, 503 P.3d 274, 296 (Mont. 2022) ("[W]e have discarded the common law concept[] of res gestae 'which, like magic incantations, had been invoked [to] admit evidence of questionable value without subjecting it to critical analysis[.]'" (quoting *State v. Guill*, 228 P.3d 1152, 1160 (Mont. 2010)); *Snow v. State*, 77 N.E.3d 173, 174 (Ind. 2017) ("[R]es gestae—the common-law doctrine that made evidence admissible when it was part of a crime's story—is no more."); *State v. Gunby*, 144 P.3d 647, 663 (Kan. 2006) (same); *State v. Kralovec*, 388 P.3d 583, 587 (Idaho 2017) (same); *People v. Jackson*, 869 N.W.2d 253, 269 (Mich. 2015)

(same); *State v. Rose*, 19 A.3d 985, 1011 (N.J. 2011) (same); *People v. Dennis*, 692 N.E.2d 325, 331 (Ill. 1998) (same). In fact, no federal circuit court of appeals currently applies the res gestae doctrine. *United States v. Bowie*, 232 F.3d 923, 928–29 (D.C. Cir. 2000).

This Court should grant review and follow suit. Because res gestae achieves far more harm than good, the Court should hold other act evidence must comply with ER 404(b) and that res gestae does not provide an independent basis of admissibility. *See State v. Fetelee*, 175 P.3d 709, 737 (Haw. 2008) (abolishing res gestae and ruling that HRE 404(b) provides the sole basis to admit other misconduct evidence).

b. The Court of Appeals incorrectly held the evidence of the filly's malnourishment constituted res gestae.

Even if the Court does not abandon res gestae, it should still grant review to provide much-needed guidance on the proper application of the doctrine.

An uncharged instance of misconduct may constitute res gestae if it "is relevant and necessary to prove an essential element of the crime charged." *State v. Tharp*, 27 Wn. App. 198, 204, 616 P.2d 693 (1980), *aff'd*, 96 Wn.2d 591, 637 P.2d 961 (1981). Such evidence might be admissible "when necessary to 'complete the story of the crime on trial by proving its immediate context of happenings near in time and place.'" *Warren*, 134 Wn. App. at 62 (quoting *Tharp*, 27 Wn. App. at 204). "The other acts should be inseparable parts of the whole deed or criminal scheme." *Mutchler*, 53 Wn. App. at 901. The evidence that the filly was malnourished failed this standard.

As the Court of Appeals acknowledged, the evidence about the filly's health was "unrelated to the condition of the mare." Slip Op. at 10. This is correct.

There was no connection between Mr. Martinez underfeeding his filly and him underfeeding his mare. RP 217–18, 224, 235, 409. Instead, Mr. Martinez underfeeding

his filly and underfeeding his mare were substantively independent and self-contained events. One did not cause or respond to the other. Thus, the evidence about the filly did not provide necessary context for Mr. Martinez's mistreatment of his mare, nor was it "part of" his offense against the mare. *See Mutchler*, 53 Wn. App. at 902.

Likewise, the evidence of him underfeeding his filly was not inseparable from evidence of the charged offense. Instead, the proof of the charged offense did not depend on proof Mr. Martinez underfed his filly. *See id.* To be admissible as res gestae, it should be infeasible to separate the uncharged misconduct evidence from the other admissible evidence. *See United States v. Hagerman*, 555 F.3d 553, 555 (7th Cir. 2008). But since Mr. Martinez's maltreatment of the mare did not in any way depend on the maltreatment of the filly, nothing prevented the State from proving Mr. Martinez committed animal cruelty against his mare without evidence of the filly's malnourishment.

Despite this, the Court of Appeals held the filly's malnourishment was "integral" to the State's case. Slip Op. at 10. It reasoned the evidence demonstrated Mr. Martinez caused the mare's malnourishment. As explained above, this simply means the evidence about the filly's health was propensity evidence.

"ER 404(b) bars admission of such propensity evidence under any name." *Crossguns*, 199 Wn.2d at 301 (Gordon McCloud, J., dissenting). This Court should grant review and clarify that, even if res gestae is an independent basis, it does not permit the admission of propensity evidence. The Court should also grant review and reiterate its precedent that res gestae evidence must pass the same four-prong test as any other ER 404(b) evidence. *See Brown*, 132 Wn.2d at 571.

2. The State cannot disarm Mr. Martinez solely because he was convicted of first-degree animal cruelty, a non-violent felony.

The right to keep and bear arms under the Second Amendment is among the "fundamental rights necessary to our system of ordered liberty." *McDonald v. Chicago*, 561 U.S. 742, 778, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). The U.S. Supreme Court established a two-step test to determine whether a disarmament violates the Second Amendment.

First, courts must ask whether "the Second Amendment's plain text covers an individual's conduct." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). If so, "the Constitution presumptively protects that conduct" and the court proceeds to the second step. *Id.* The State must then "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.*

The State attempts to prohibit Mr. Martinez from possessing a firearm, conduct that is at the heart of the Second Amendment's protection. *United States v. Gailes*, 118 F.4th 822, 826 (6th Cir. 2024). Because the U.S. Constitution presumptively protected his conduct, the State must demonstrate a historical tradition of permanently disarming people in Mr. Martinez's circumstance.

But the State offered zero historical analysis in the Court of Appeals, and that court neglected to consider any relevant historical tradition. Instead, the court incorrectly resolved the issue at the first step of the *Bruen* framework.

a. The Second Amendment protects Mr. Martinez and his conduct.

At step one of the *Bruen* test, this Court "asks whether the Second Amendment's plain text covers" Mr. Martinez and his intended conduct. *Gails*, 118 F.4th at 826. There is no dispute that Mr. Martinez's intended conduct—possession of a firearm—is covered by the plain text of the

Second Amendment. *E.g.*, *id.* ("The Second Amendment unquestionably protects Gailes's conduct (i.e., possession of pistols, as opposed to an unusually dangerous weapon, for example)."). Instead, the Court of Appeals only ruled that Mr. Martinez is not part of "the people" under the Second Amendment because he "is a felon." Slip Op. at 15. It is mistaken.

"The right to bear arms is held by 'the people.'" *United States v. Connelly*, 117 F.4th 269, 274 (5th Cir. 2024) (quoting U.S. Const. amend. II). That phrase is used throughout the Bill of Rights, and in each instance, it "unambiguously refers to all members of the political community, not an unspecified subset." *District of Columbia v. Heller*, 554 U.S. 570, 580, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). "Based on that consistent usage, *Heller* concluded 'the Second Amendment right is exercised individually and belongs to *all* Americans.'" *Connelly*, 117 F.4th at 274 (quoting *Heller*, 554 U.S. at 581) (emphasis in original).

Mr. Martinez, as an American citizen, is thus covered by the Second Amendment. *Id.* (concluding the defendant, a citizen with a felony record, was covered by the Second Amendment). The Court of Appeals ignored this result by focusing on *State v. Ross*, 28 Wn. App. 2d 644, 537 P.3d 1114 (2023), and *State v. Bonaparte*, __ Wn. App. 2d __, 554 P.3d 1245 (2024). Slip Op. at 12–15.

In *Ross* and *Bonaparte*, the court ruled that "the people" only covers "law-abiding citizens." *Ross*, 28 Wn. App. 2d at 652; *Bonaparte*, 554 P.3d at 1251–52. It based its reasoning on dicta from the U.S. Supreme Court, which said the Second Amendment protects the "right of law-abiding, responsible citizens" to possess a firearm. *Heller*, 554 U.S. at 635; *McDonald*, 561 U.S. at 790; *Bruen*, 597 U.S. at 29.

This dicta produces a simple argument: "Felons are not 'law-abiding, responsible citizens,' and felon-in-possession laws are presumptively valid. Thus, the argument goes, the government may disarm individuals who've been

convicted of a felony." *United States v. Williams*, 113 F.4th 637, 645 (6th Cir. 2024). But, as many courts—including the Supreme Court—have held, this argument is incorrect.

While *Heller*, *McDonald*, and *Bruen* used the phrase, "law-abiding citizen," those decisions "'said nothing about the status of citizens who were not [law-abiding]'— much less that only law-abiding citizens have Second Amendment rights." *Williams*, 113 F.4th at 646 (quoting *United States v. Rahimi*, 602 U.S. 680, 703, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024)). Imposing such a limitation on "the people" contravenes *Heller* itself, which held the Second Amendment is an individual right that belongs to "all Americans." *Heller*, 554 U.S. at 580. Because this right is an individual right, as opposed to a civic right, the government cannot retract it from citizens—felons or otherwise.

Civic rights "must tie the right to some activity for the collective good, like militia service" or voting. *Williams*, 113 F.4th at 647. But *Heller* made clear that the Second

Amendment is not a civic right; "Rather, it's an *individual* right unconnected to any other civic activity." *Id.* (emphasis in original). "The right to self-defense—unlike the rights to vote or serve on a jury—doesn't bear the same connection to a common, community-oriented civic activity that only the virtuous enjoyed." *Id.*

As a point of comparison, while the State can prohibit felons from voting (which is a civic right), it cannot strip a felon of "their right to speak freely, practice the religion of their choice, or to a jury trial." *Id.* The Second Amendment is no different than this latter group of individual rights. *Id.* (citing *Heller*, 554 U.S. at 595); *accord Range v. Attorney Gen. United States*, __ F.4th __, 2024 WL 5199447, at *4 (3d Cir. Dec. 23, 2024) ("We see no reason to adopt a reading of 'the people' that excludes Americans from the scope of the Second Amendment while they retain their constitutional rights in other contexts.").

The U.S. Supreme recently suggested this outcome in *Rahimi*. There, the Government claimed Mr. Rahimi was not a member of "the people" under the Second Amendment because he was charged with violent offenses and thus not a "responsible, law-abiding" citizen. *Rahimi*, 602 U.S. at 772–73 (Thomas, J., dissenting). The Supreme Court discarded that argument. *Id.* at 701–02; *see id.* at 773 (Thomas, J., dissenting) ("Not a single Member of the Court adopts the Government's theory.").

The Court held the Government's proposed limitation was too "vague" to dictate the Second Amendment's applicability and would create an "unclear . . . rule" that does not "derive from [Supreme Court] case law." *Id.* at 701. While it acknowledged the Court used the phrase in *Heller* and *Bruen*, the *Rahimi* Court held those decisions "did not define the term and said nothing about the status of citizens who were not 'responsible.'" *Id.* at 702.

Importantly, the "law-abiding, responsible" limitation does not come from the text of the Second Amendment. *Id.* at 773 (Thomas, J., dissenting). But the text, and the text alone, controls the inquiry at the first step of the analysis. *Bruen*, 597 U.S. at 32. Again, the Second Amendment simply says, "the people," without any limitation. U.S. Const. amend. II. "Nothing in the Second Amendment's text draws a distinction among the political community between felons and non-felons—or, for that matter, any distinction at all." *Williams*, 113 F.4th at 649.

For these reasons, numerous post-*Rahimi* courts have held that people with felony convictions remain a part of "the people" under the Second Amendment. *E.g., id.* 649–50; *Range*, 2024 WL 5199447, at *5; *United States v. Gore*, 118 F.4th 808, 813 (6th Cir. 2024); *United States v. Goins*, 118 F.4th 794, 798 n.3 (6th Cir. 2024); *Gailes*, 118 F.4th at 826; *see Connelly*, 117 F.4th at 274 (employing the same reasoning to conclude drug users are part of "the people").

Thus, because Mr. Martinez is an American citizen and his intended conduct is covered by the text of the Second Amendment, "the Constitution presumptively protects" his conduct. *Bruen*, 597 U.S. at 18.

The Court of Appeals incorrectly concluded otherwise in this case, *Ross*, and *Bonaparte*. This is a quickly developing field of law, but the Court of Appeals has not been adequately considering this issue. More challenges will arise unless and until this Court takes review. This case—which addresses whether a sole conviction of a non-serious and non-violent felony can result in disarmament—is the perfect vehicle to do so. This Court should grant review.

b. The State will not be able to provide a historical tradition of disarming because they were convicted of a non-violent felony.

Because the Second Amendment covers Mr. Martinez and his intended conduct, the case shifts to the second step of the *Bruen* test. At this stage, the State has the burden of proving that disarming Mr. Martinez is consistent with "the

Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. To carry this burden, the State must prove the current law is "relevantly similar" to "founding-era historical precedent." *Id.* at 21–22, 27.

The State failed to address this step in the Court of Appeals. But even if it had, there are several indications the State would be unable to carry its burden.

For example, in *Williams*, the Sixth Circuit found a historical tradition of disarming violent people. 113 F.4th at 658–59. It indicated that no similar tradition supports disarming non-violent people. *Id.* at 659, 663; *accord Range*, 2024 WL 5199447, at *7. Similarly, in *Connelly*, the Fifth Circuit held disarming a non-violent drug user violated her Second Amendment rights. 117 F.4th at 283. While it found a historical tradition of disarming "dangerous" individuals, that tradition did not support disarming a non-violent drug user. *Id.* at 278–79.

Underfeeding a horse, while tragic, is not a violent offense, nor is it a "serious" felony under RCW 9.41.010(42). There is no historical tradition of disarming someone that commits such an offense. This Court should grant review and hold that disarming Mr. Martinez violates the Second Amendment.

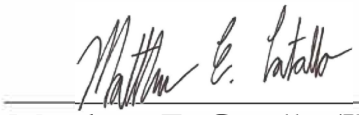
G. CONCLUSION

Mr. Martinez respectfully asks this Court to accept discretionary review. RAP 13.4(b).

This petition is 4,914 words long and complies with RAP 18.7.

DATED this 6th day of August 2025.

Respectfully Submitted



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JOHN MARTINEZ, Appellant.	DIVISION ONE No. 84824-1-I UNPUBLISHED OPINION

DWYER, J. — John Martinez appeals from his conviction of animal cruelty in the first degree. He asserts that the trial court erred by denying a motion for a mistrial based on alleged juror misconduct. Additionally, he contends that the trial court erred by admitting certain evidence in violation of ER 404(b). Martinez furthermore claims that, because he was convicted of a nonviolent felony, his Second Amendment right to bear arms is violated by the restriction on the possession of firearms mandated by RCW 9.41.040 and RCW 9.41.047. While these arguments fail, Martinez is entitled to relief from the legal financial obligations (LFOs) imposed as part of his sentence. Therefore, we affirm the conviction but remand for the trial court to strike the LFOs from the judgment and sentence.

I

John Martinez owned two horses—a mare and her filly. In October 2016, Snohomish County Animal Control (SCAC) received a complaint concerning the

health of the two horses. According to the probable cause affidavit, an SCAC officer visited the horses in the pasture with Martinez and also requested that he arrange for a veterinarian to examine the horses.

In early November 2016, equine veterinarian Dr. Paul Haffner was called to perform a physical examination of the mare. Dr. Haffner determined that the mare had a body score of one[1] on a scale of one to nine, meaning "the ribs are all showing . . . [and] the hip bones are prominent. There's little to no fat, almost no covering to the bones, just enough, basically enough muscle to get around." He also observed the two-year-old filly nursing on the mare. As a result of his examination, Dr. Haffner provided Martinez with a feeding plan and a recommendation to separate the filly and the mare.

An SCAC officer visited the mare again in early December and found her to be "extremely emaciated." The mare appeared to be lethargic and, at one point, laid down on the ground on her side. The officer opined that the mare was extremely weak and cold. The officer also observed the filly attempting to nurse on the mare. The filly was thin as well, with an estimated body score of two.

As a result of his findings, the SCAC officer contacted Martinez and informed him that his mare was in "extremely critical condition," and Martinez needed to act immediately or the horses would be removed. Because Martinez failed to act within the allotted time, SCAC took both horses to its holding facility. The mare's condition deteriorated and she was eventually euthanized.

[1] The Henneke body scoring system consists of a one-to-nine scale wherein the body fat of six different parts of the horse is evaluated and averaged. One, the lowest score, means the horse is emaciated. An animal scoring a nine would be extremely obese.

As a result of the poor health and subsequent death of the mare, the State charged Martinez with one count of animal cruelty in the first degree.

Prior to opening statements, Martinez moved to exclude testimony concerning the condition of the filly. Martinez argued that such evidence "falls fairly squarely under [ER] 404(b), in terms of it being another act which [he] is not charged with, which certainly the jury could use to find that he has a propensity towards animal cruelty." The State disagreed that ER 404(b) was applicable to the evidence it intended to present with respect to the filly. The trial court noted that the evidence did not pertain to another wrongful act and was, therefore, not convinced that ER 404(b) applied. As observations related to the filly appeared to have relevance as required by ER 403 and were not unduly prejudicial, the trial court denied the motion to exclude the evidence.

At trial, the State presented testimony from Dr. Haffner as well as several animal control officers. Dr. Haffner testified that he found the mare to be very thin, lethargic, and weak. Upon examination, Dr. Haffner discovered that the mare had significantly worn incisors that hindered her ability to eat green grass. He also observed that the two-year-old filly was nursing on the mare. According to Dr. Haffner, foals are generally weaned somewhere between four and six months of age, "so the foals will grow up on their own and allow the mares to regain their weight back again." He testified that a nursing mare requires "[a]t least half again the normal caloric intake" of food "[b]ecause the energy that is put out through the milk, the nutrients of the milk." Based on his evaluation, Dr. Haffner provided Martinez with a feeding plan for the mare and advised that he

separate the nursing filly from the mare "so it's not as – as an energy drain on the mare."

In addition to Dr. Haffner, one of the SCAC officers testified that the filly was nursing on the mare beyond the normal age of weaning. The officer and a second veterinarian both opined on the impact such nursing has on a mare's health. Beyond the evidence that the filly continued to nurse on the mare, the State produced evidence pertaining to the filly alone, such as her weight, including testimony that the filly "wasn't as thin as the sorrel mare. It was still thin . . . I could see that kind of the top line of the filly, the spine area."

Defense counsel raised numerous objections during the course of trial, including, but not limited to, objections based on relevance, hearsay, lack of foundation, narrating, compound question, speculation and that certain testimony was nonresponsive. At one point, outside of the presence of the jury, defense counsel informed the court that Martinez had reported observing several members of the jury sleeping. The court responded that it had been watching the jury and, while no one had been falling asleep, some jurors were expressing visible reactions to defense counsel's objections, such as groaning and closing their eyes. It stated that it would continue to monitor the jury.

On the third day of trial, Martinez moved for a mistrial based on juror misconduct. He argued that the jurors' behavior in response to defense objections—closing their eyes and one juror audibly groaning—demonstrated that they might not be able or willing to abide by the jury instructions directing them not to hold the attorney's objections against the defendant. During its

argument on this motion, the defense acknowledged that it "[did not] have authority that specifies this specific sort of occurrence." The court denied the motion, finding that there was no evidence to suggest that the jurors' reactions were an indication that they could not follow the court's instructions.

The jury returned a verdict of guilty on the single count of animal cruelty in the first degree. The trial court sentenced Martinez to a standard range sentence of 30 days of incarceration and imposed $600 in LFOs consisting of a $100 DNA collection fee as mandated by RCW 43.43.7541 and a $500 crime victim penalty assessment (VPA) as mandated by RCW 7.68.035. The judgment and sentence also included the standard, preprinted language that Martinez may not own, use, or possess any firearm pursuant to RCW 9.41.040 and RCW 9.41.047.

Martinez timely appeals.

II

Martinez first asserts that the trial court erred in denying his motion for a mistrial based on juror misconduct. This is so, he avers, because the visible frustration expressed by the jury indicated that it would hold counsel's objections against Martinez such that he could not obtain a fair trial. We disagree.

A

"[A] mistrial may be declared before the verdict based on 'a trial irregularity which significantly infringed on [the defendant's] right to a fair trial.'" State v. Lupastean, 200 Wn.2d 26, 36, 513 P.3d 781 (2022) (alteration in original) (quoting State v. Latham, 100 Wn.2d 59, 62, 667 P.2d 56 (1983)). To determine the effect of a trial irregularity, we examine (1) its seriousness, (2) whether it

involved cumulative evidence, and (3) whether the trial court properly instructed the jury to disregard it. State v. Emery, 174 Wn.2d 741, 765, 278 P.3d 653 (2012). "The trial court should grant a mistrial only when the defendant has been so prejudiced that nothing short of a new trial can ensure that the defendant will be fairly tried." Emery, 174 Wn.2d at 765. We review a trial court's denial of a motion for a mistrial for an abuse of discretion, meaning that no reasonable judge would have reached the same conclusion. Emery, 174 Wn.2d at 765.

B

As the basis for the mistrial request, Martinez argued that the jurors' reactions proved that the attorney's objections influenced them and they, in turn, would influence other jurors, thus amounting to juror misconduct. Defense counsel engaged in the following exchange during argument on the motion:

> THE COURT: And given I have repeatedly told them to not discuss anything that they have seen or heard here in the courtroom, what evidence do we have to even suggest that they're not following the [c]ourt's instructions?
>
> [DEFENSE COUNSEL]: I would argue that their very visible reactions, which were visible to Your Honor and the court staff, are evidence that they are not following the instruction that they were given that the objection should not influence them.
>
> THE COURT: What is it about someone reacting to something that's presented means that they're not following the [c]ourt's instruction?
>
> [DEFENSE COUNSEL]: I think if they're reacting in a way that is visibly frustrated, they are allowing the objections to influence them.

The court denied the motion for a mistrial, ruling,

> What I have perceived I don't believe in any way is the jurors disregarding the instruction that I have repeatedly given them. Also, the introductory instruction is clear. We just simply have no

> evidence in front of the [c]ourt to suggest even that there is misconduct that has somehow occurred.
>
> Jurors can react however they wish to react. We cannot control that; at least not in this context, what we are talking about here presently. They are clearly instructed in how they are to view the evidence, and I don't have anything more at this point, other than really bare speculation.

Martinez cites no authority for his proposition that the visible reactions from members of the jury in this case amounted to misconduct. As the trial court aptly explained, Martinez premised his motion for a mistrial on mere speculation rather than on any evidence of juror misconduct. The trial court, after swearing in the jury, specifically instructed it on the matter of objections.

> You may hear objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

The jury received the same instruction, once again, prior to its deliberations. Thus, the trial court twice instructed the jury on the very concern raised by Martinez as the basis for his mistrial request. Absent evidence to the contrary, we presume that the jury follows the instructions as given by the court. State v. Kalebaugh, 183 Wn.2d 578, 586, 355 P.3d 253 (2015).

Here, Martinez provided no evidence, in the trial court or on appeal, that the jurors disregarded the trial court's instructions and allowed the attorney's objections to influence them. Further, he offers no express analysis or support as to how the jurors' behavior prejudiced him. Accordingly, Martinez fails to establish that he was "so prejudiced that nothing short of a new trial can ensure that the defendant will be fairly tried." Emery, 174 Wn.2d at 765. Therefore, the

trial court's decision to deny the motion for a mistrial was not an abuse of discretion.

III

Next, Martinez avers that the trial court erred by admitting evidence pertaining to the filly, arguing that such evidence was propensity evidence and unduly prejudicial and, therefore, should have been excluded pursuant to ER 404(b). We disagree. The testimony was properly admissible as res gestae evidence relevant to the crime charged.

A

We review a trial court's ruling to admit or exclude evidence for an abuse of discretion. State v. Fisher, 165 Wn.2d 727, 745, 202 P.3d 937 (2009). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. State v. Taylor, 193 Wn.2d 691, 697, 444 P.3d 1194 (2019). We may affirm the trial court on any ground supported by the record and the law. State v. Mitchell, 190 Wn. App. 919, 924, 361 P.3d 205 (2015).

Martinez moved to exclude the evidence pursuant to ER 404(b), which prohibits the admission of evidence of other crimes, wrongs, or acts "to prove the character of a person in order to show action in conformity therewith." However, the trial court, in denying the motion, stated that it was not convinced that the evidence fell under the purview of ER 404(b) because it was "not sure that there is evidence of *another* wrongful act, or an act, I guess, generally, as is called for by 404(b)." (Emphasis added.) The trial court was correct in its assessment that

ER 404(b) was not applicable to the evidence at issue. Rather than evidence of other misconduct, testimony concerning the filly is properly conceived of as "res gestae" or "same transaction" evidence.

B

Testimony may be admissible as res gestae evidence "'if it is so connected in time, place, circumstances, or means employed that proof of such other misconduct is necessary for a complete description of the crime charged, or constitutes proof of the history of the crime charged.'" State v. Schaffer, 63 Wn. App. 761, 769, 822 P.2d 292 (1991) (quoting 5 KARL B. TEGLAND, WASHINGTON PRACTICE: EVIDENCE § 115, at 398 (3d ed.1989)), aff'd, 120 Wn.2d 616, 845 P.2d 281 (1993). Such evidence is admissible "in order that a complete picture be depicted for the jury." State v. Tharp, 96 Wn.2d 591, 594, 637 P.2d 961 (1981). Res gestae evidence "completes the story of the crime charged or provides immediate context for events close in both time and place to that crime." State v. Sullivan, 18 Wn. App. 2d 225, 237, 491 P.3d 176 (2021).

Here, rather than describing other conduct, much of the State's evidence pertaining to the filly established that it was nursing on the mare that Martinez was charged with abusing. The State's opening statement first raised the issue of the filly in this context:

> Dr. Haffner also noticed that there was a second horse on the property, a filly, which in English is a younger horse, and that filly was still nursing on the sorrel mare. And this was far too long that this filly should have been nursing. He also told the defendant to remove the nursing foal.

As discussed above, Dr. Haffner stated that he observed an approximately two-year-old filly that was still nursing on the mare, around a year and a half beyond what he would consider typical nursing age. He further explained that a nursing filly requires extra caloric intake for the mare. Other witnesses provided similar testimony as to the impact that the nursing filly would have on the mare's health and nutritional needs.

The evidence of the filly nursing on the mare was integral to the State's explanation of the mare's condition and was, therefore, directly relevant to the animal cruelty charge that Martinez faced at trial. Thus, the evidence was material to an element of the crime charged, rather than evidence of other misconduct. See Sullivan, 18 Wn. App. 2d at 240. The testimony describing the prolonged nursing and related nutritional impact on the mare provided relevant context and completed the story of the crime charged.

While seemingly unrelated to the condition of the mare, the evidence regarding the filly's weight was also pertinent to the context of the animal cruelty charge. One animal control officer testified that when called to investigate, he considers different possibilities when only one of a group of horses appears thin as opposed to when several or all horses appear thin. If more than one horse is affected, the cause is more likely to be something such as the amount and quality of the feed provided. That both the filly and the mare were affected is not evidence of a separate crime but, rather, is integral to the full story of Martinez's treatment of the mare. This was evidence not of another act, but of the very charge before the jury.

Accordingly, the evidence pertaining to the filly was properly admissible under the theory of res gestae. The trial court's decision to admit the evidence was not an abuse of discretion.

IV

Martinez next asserts that the restriction on his right to possess a firearm resulting from his conviction violates the right to bear arms guaranteed by the Second Amendment. This is so, Martinez avers, because deprivation of his right to possess a firearm after conviction for a nonviolent felony is not consistent with the historical tradition of firearm regulation in this country. We disagree and adhere to the reasoning in State v. Ross, 28 Wn. App. 2d 644, 537 P.3d 1114 (2023), review denied, 2 Wn.3d 1026 (2024), and State v. Bonaparte, __ Wn. App. 2d __, 554 P.3d 1245 (2024), in which this court addressed and rejected the very argument raised by Martinez.

We review constitutional challenges de novo. City of Seattle v. Evans, 184 Wn.2d 856, 861, 366 P.3d 906 (2015). We presume constitutionality, and the burden is on the challenger to show that a statute is unconstitutional. Evans, 184 Wn.2d at 861-62. An as-applied challenge, such as the one asserted here by Martinez, requires examination of the statute in the specific circumstances of the case. Ross, 28 Wn. App. 2d at 646. "Holding a statute unconstitutional as applied does not invalidate the statute but prohibits its application in that specific context and future similar contexts." Ross, 28 Wn. App. 2d at 646.

The Second Amendment to the United States Constitution, which has been incorporated to the states, declares that "[a] well regulated militia being

necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S. CONST. amend II. See McDonald v. City of Chicago, 561 U.S. 742, 791, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010); State v. Sieyes, 168 Wn.2d 276, 282, 225 P.3d 995 (2010). However, the right to bear arms is not without limits, which include "longstanding prohibitions on the possession of firearms by felons." District of Columbia v. Heller, 554 U.S. 570, 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008); see, e.g., N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 34, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022); McDonald, 561 U.S. at 786; State v. Krzeszowski, 106 Wn. App. 638, 641, 24 P.3d 485 (2001).

In Ross, we traced recent jurisprudence from the United States Supreme Court on the constitutionality of certain restrictions on the possession of firearms. 28 Wn. App. 2d at 647-50. We noted that, in Heller, the Supreme Court recognized and affirmed restrictions on firearm possession by felons by explicitly stating that "'nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.'" Ross, 28 Wn. App. 2d at 647 (quoting Heller, 554 U.S. at 626-27). Two years after Heller, the Supreme Court acknowledged that, "[w]e made it clear in Heller that our holding did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons,'" and "repeat[ed] those assurances." McDonald, 561 U.S. at 785 (plurality opinion) (citation omitted) (quoting Heller, 554 U.S. at 626-627).

Subsequently, New York State Rifle considered a regulatory licensing program that required applicants to prove "proper cause" in order to carry a handgun in public. 597 U.S. at 11-13. Based on the language used in that decision, we concluded that the Supreme Court continued to support the longstanding restrictions on possession of firearms by felons:

> Relevant here, N.Y. State Rifle did not overrule, or cast doubt on, the Court's recognition in Heller and McDonald that the Second Amendment did not preclude prohibitions on felons possessing firearms. The six-justice majority opinion fully embraced the earlier decisions in Heller and McDonald that the Second and Fourteenth Amendments protect the right of "ordinary, *law-abiding* citizens to possess a handgun in the home for self-defense." Indeed, at least 11 times the majority referenced the Second Amendment right of "law-abiding" citizens.

Ross, 28 Wn. App. 2d at 649 (citation omitted). Accordingly, we held "that consistent with Heller, McDonald, and New York State Rifle, the Second Amendment does not bar the State from prohibiting the possession of firearms by felons as it has done in RCW 9.41.040(1)." Ross, 28 Wn. App. 2d at 651. Further, Ross applied its consideration of these cases to the constitutionality of prohibiting nonviolent felons from possessing firearms, and noted that none of the pertinent Supreme Court cases distinguishes between violent felons and nonviolent felons for the purpose of the Second Amendment. We stated that "Ross's attempt to distinguish violent and nonviolent felons is of his own construct," and declined to make such a distinction. Ross, 28 Wn. App. 2d at 651. Thus, we held that the constitutional challenge to the firearm restrictions as applied to nonviolent felons failed. Ross, 28 Wn. App. 2d at 652-53.

This court revisited the constitutionality of firearm restrictions on felons in Bonaparte, wherein the defendant argued that the State must prove a "historical tradition of depriving a person of the right to possess a firearm based on a prior conviction for assault in the first degree" for such restrictions to be constitutional under the Second Amendment. 554 P.3d at 1247. Once again, we examined the Second Amendment jurisprudence from Heller, McDonald, and New York State Rifle, after which we turned our consideration to United States v. Rahimi, 602 U.S. __, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024), a decision on the Second Amendment recently issued by the United States Supreme Court. Bonaparte, 554 P.3d at 1248-49. Rahimi addressed a federal statute that prohibits the subject of a domestic violence restraining order from possessing a firearm. 144 S. Ct. at 1894. Despite the context of a restraining order rather than a felony conviction, Rahimi reiterated that prohibitions on the possession of firearms by felons are presumptively lawful. 144 S. Ct. at 1902; Bonaparte, 554 P.3d at 1249. Accordingly, Bonaparte emphasized the Supreme Court's "repeated articulation that prohibitions on the possession of firearms by felons are presumptively lawful or more general language that the Second Amendment right to keep and bear arms is 'not unlimited.'" 554 P.3d at 1251 (quoting Heller, 554 U.S. at 595).

After tracing Second Amendment jurisprudence through the most recent cases, Bonaparte considered the as-applied challenge to firearm restrictions on those with prior convictions for assault in the first degree. 554 P.3d at 1251-52. As with the violent versus nonviolent felony distinction, the attempt to distinguish

"people with prior assault convictions" was of the defendant's "own construct" and "is of no moment." Bonaparte, 554 P.3d at 1251. Historical tradition supports such restrictions where the defendant is a *felon*.

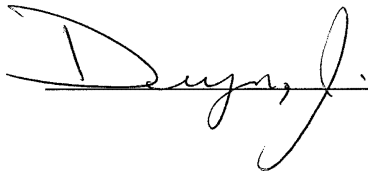
Restrictions on firearm possession by a felon, regardless of whether the crime of conviction was violent or nonviolent, do not violate the rights guaranteed by the Second Amendment. As a result of his conviction, Martinez is a felon, and thus, his as-applied challenge to the restrictions fails.

V

Finally, Martinez requests that we direct the trial court to strike the LFOs from his judgment and sentence pursuant to legislation enacted subsequent to his sentencing. The legislative amendments require waiver of the VPA and the DNA collection fee for indigent defendants. RCW 7.68.035; RCW 43.43.7541.[2] As a defendant in a case pending on direct appeal, Martinez is entitled to the benefit of legislative changes. State v. Ramirez, 191 Wn.2d 732, 749, 426 P.3d 714 (2018).

The trial court found that Martinez was indigent. Furthermore, the State concedes that the LFOs should be struck from the judgment and sentence. Accordingly, we remand to the trial court solely for that purpose.

Affirmed in part and remanded.



[2] See LAWS OF 2023, ch. 449, §§ 1, 4.

WE CONCUR:

Díaz, J. Chung, J.

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