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

STATE OF WASHINGTON, Respondent

v.

RANDY JAMAL BLOUNT, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-01462-3

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The trial court properly exercised its discretion in requiring Blount to register as a felony firearm offender.**
- II. **The State agrees there is a scrivener's error that requires correction.**

STATEMENT OF THE CASE

The State charged Randy Blount (hereafter 'Blount') with Assault in the Second Degree for an incident that occurred on July 7, 2016. CP 1. The State also alleged that Blount used a firearm during the commission of the offense. CP 1. The matter proceeded to trial in July 2018. RP 1-367. The jury returned a verdict of Guilty on the Assault in the Second Degree charge, and entered a finding that Blount was armed with a firearm during the commission of the offense. CP 114-15.

At trial, the evidence showed as follows:

Vivianie Tutii lives in Vancouver, Washington with her husband, Daniel Tomei, their five daughters, and two granddaughters. RP 83-84. On the morning of July 7, 2016, Ms. Tutii took one daughter to Clark College to drop her off. RP 84-85. She had her daughter, her husband, and her baby granddaughter in the vehicle with her. RP 85-86. On her way home, after dropping off her daughter, she saw a man on a bicycle in front of a church before she reached her apartment. RP 86. Ms. Tutii turned left into

her apartment parking lot and did not see the bike rider any longer. RP 87. However, as she turned her vehicle to park she heard the bicycle rider say the “F-word.” RP 87. Her husband also heard the man use the “F-word.” RP 88.

Ms. Tutii worked to get her granddaughter out of the vehicle and was going inside to put her down to bed. RP 88. As she got out of the vehicle, her husband walked over to the bicyclist’s apartment building. RP 89. Ms. Tutii could not hear what her husband said at that time. RP 89. Ms. Tutii went inside and put her granddaughter down, and woke up her daughter, Danielle, to help her. RP 91-92. Danielle was 18-years-old at the time. RP 92.

After Ms. Tutii went inside to put her granddaughter down, she went back outside. RP 92. She saw a man with a gun pointing it at her husband’s forehead. RP 92, 112. The man with the gun was not the bicyclist she had seen before. RP 92-93. Ms. Tutii believes her husband was scared at the time the man had the gun pointed at him. RP 94. Ms. Tutii had the police called and it took them about twenty minutes to arrive. RP 96-97.

Mr. Tomei remembers riding to Clark College with his wife and granddaughter to drop his daughter off at school one morning two years prior to trial. RP 116-17. As they were turning into their apartment’s

parking lot, a man riding his bike showed them the middle finger and said the “F-word.” RP 117-18. Mr. Tomei remembered hearing the “F-word” more than once. RP 118. Mr. Tomei thinks they almost hit the man on the bike with their car. RP 120. Mr. Tomei was mad about the man flipping them off and saying the “F-word.” RP 120. After his wife parked their car, Mr. Tomei went to the front of the man’s apartment in the parking lot, but he never made it to the apartment door, or even up the steps to the apartment. RP 120, 123. He remained in the parking lot. RP 123. He went over there to find out why he flipped them off. RP 121. Mr. Tomei had never had a problem with this man before, nor did he have a problem with the man’s family, or with the defendant. RP 121. In fact, Mr. Tomei had never met the defendant before. RP 121.

Right before it appeared the man was going into his apartment, he picked up his bike and took off running. RP 122. Mr. Tomei then hears an older lady say, “what did he do again?” RP 122. Mr. Tomei exchanged words with the woman through the window. RP 135. Mr. Tomei was angry and wanted an apology. RP 135. After the man took off, Blount came out of the apartment and came towards Mr. Tomei. RP 122-23. He took a gun from behind his back, cocked it, and told Mr. Tomei that he was going to kill him. RP 122-24. The gun was pointed at Mr. Tomei’s chest, and was about 7 to 10 feet from him. RP 125. Mr. Tomei took

Blount seriously and he thought to himself that he would not turn his back on him because he did not want to get a bullet in his back. RP 126. Mr. Tomei was afraid of being shot. RP 126.

Mr. Tomei slowly backed away. RP 127. Then a maintenance man for the apartment complex showed up. RP 127. The maintenance man told Mr. Tomei to “go home,” and said “he has a gun. Call the police.” RP 128. Mr. Tomei stood in front of his house waiting for the police to arrive. RP 128.

Daniel Savares lived at the same apartment complex as Mr. Tomei and Ms. Tutii, and worked there doing maintenance. RP 145-46. On July 7, 2016, Mr. Savares was working when he heard some commotion from one of the buildings. RP 147. It was from the front of Blount’s building. RP 147. Mr. Savares went to see what was going on. RP 149. He saw Mr. Tomei, Ms. Tutii, and their daughter, and he saw Blount and another man and a woman. RP 149-50. The people were exchanging words at the time. RP 150. As Mr. Savares got out of the golf cart he used to drive over, he saw a gun pulled out. RP 150. Blount picked up the gun and pointed it at Mr. Tomei. RP 150. It was pointed at Mr. Tomei’s upper body. RP 151. Mr. Savares then drove the golf cart in between Blount and Mr. Tomei to separate them. RP 150. Mr. Savares was trying to reason with them, have them solve their problem a different way. RP 151-52. Blount then went

back into his apartment and apparently put the gun away before he came back outside and continued to exchange words with Mr. Tomei. RP 152. Mr. Savares stayed there until the police arrived. RP 153-54.

Danielle Daniel lived with her parents, Mr. Tomei and Ms. Tutii, on July 7, 2016. RP 161. She was sleeping around 10-10:30am when her mom, Ms. Tutii, came in, yelling frantically, telling her she needed help. RP 162. Ms. Tutii said she needed Ms. Daniel to try to go get her dad, that someone had a gun pointed at him. RP 162. Ms. Daniel immediately got up and ran outside. RP 162. When she got outside, Ms. Daniel saw her father standing in the parking lot and saw Blount facing her dad holding a gun straight at him. RP 163. Ms. Daniel heard Blount say “Get the fuck out of here. I’ll kill you. I’ll kill you. Get the fuck out of here.” RP 164. Ms. Daniel could see her father slowly back up, but Ms. Daniel went to him and tried to pull him back more. RP 164. Ms. Daniel was scared the man would pull the trigger, so she grabbed her dad. RP 164. Ms. Daniel told her dad, “it’s okay. Let it go. Come on, come on, it’s okay.” RP 165. As Ms. Daniel was trying to pull her dad away, Blount and the boy were walking closer to her dad. RP 167.

Officer Courtney Langston of the Vancouver Police Department was dispatched to the incident that occurred between Blount and Mr. Tomei at approximately 10:30am on July 7, 2016. RP 178. When he

arrived, Mr. Savares waved him over. RP 185. Officer Langston saw Blount, a man (the bike rider), and the woman. RP 185. Officer Langston talked to Blount who told him that his cousin, Timothy Thompson (the bike rider), had come and told him that he had gotten into an argument with the neighbor. RP 189-90. Blount said that Mr. Thompson then left the apartment and got into an argument, which Blount heard, so Blount grabbed his gun and went out to stop the argument. RP 190. Blount said he was in fear for Mr. Thompson. RP 190. Blount admitted to pointing the gun at the other man. RP 191. Blount at first said that he was on the sidewalk in front of his apartment, but when confronted about other witnesses' statements that they had been in the parking lot, Blount changed his statement to say he was in the parking lot. RP 191. Blount claimed the gun was unloaded. RP 192. He also explained to Officer Langston that he had been telling the man to leave. RP 192. Officer Langston spoke with Timothy, and while he was speaking with Timothy Blount interjected that the victim had "disrespected our name." RP 193.

During his investigation, Officer Langston noted the heights and weights of Mr. Tomei and Blount. Mr. Tomei stood at 5'7" tall and weighed 140 pounds, and Blount stood at 6'0" and weighed 382 pounds. RP 195. Blount was significantly larger than Mr. Tomei. RP 195-96.

After speaking with several witnesses, Officer Langston conferred with Officer Bachelder, who had spoken with other witnesses, including Mr. Tomei. RP 196, 215-16. The officers obtained the firearm after Mr. Thompson or another person went inside the apartment to retrieve it. RP 197. Officer Langston placed Blount under arrest soon after, and then had another conversation with him post-*Miranda*. RP 196. During that conversation Blount relayed that he used the gun used during the altercation with Mr. Tomei at the shooting range. RP 196-97. He again told Officer Langston that the spring in the magazine had broken. RP 197.

Officer Langston took possession of the firearm and secured it in evidence. RP 197-98. The firearm was a 9mm Walther Arms. RP 200.

Officer Doug Rickard of the Vancouver Police Department testified that he performed a functionality test on the Walther Arms 9mm gun that Officer Langston had recovered from the scene of the incident. RP 205-10. The firearm functioned as designed and test bullets fired properly. RP 208-10. He noted that there is no safety on this gun, that all one needs to do to fire it is press the trigger. RP 209.

Blount testified in his defense. He testified that he was asleep and woke to his cousin, Mr. Thompson, “going off about something.” RP 266. He then noticed his mother at the window of the room he was sleeping in, yelling out the window. RP 267. Blount then went to the window to join

his mother; he yelled out to Mr. Tomei to go home many times. RP 268. Mr. Tomei was shouting and gesturing. RP 268-69. Mr. Tomei did not leave. RP 268-70. Blount testified that he has PTSD and started having flashbacks and was wondering what Mr. Tomei was going to do and wondering why he wasn't leaving. RP 270. Blount's mother left the room with the window to go outside, so Blount followed, and grabbed his gun on his way out. RP 271. Blount wanted to end the altercation between Mr. Tomei and Mr. Thompson "anyway possible" and decided that pointing a gun at someone is a good way to get them to stop. RP 272. Blount went outside and up towards Mr. Tomei and raised the gun and said, "get the fuck out of here. You need to leave." RP 273. Blount admitted to aiming the gun at Mr. Tomei's head and face. RP 273. Blount perceived Mr. Tomei as a threat. RP 272-73. Blount claimed that his mother told him to put the gun away and that her words brought him out of his panic, so he went inside the apartment and put his gun away. RP 274. Blount claimed he never made any verbal threats to Mr. Tomei. RP 276.

After the jury returned its verdict, Blount was sentenced to a standard range sentence plus a 36 month enhancement for the firearm finding. CP 119. The trial court considered whether Blount should register as a felony firearm offender and determined that evidence of the defendant's propensity for violence that would likely endanger other

persons made it so Blount should so register. CP 120. Blount then timely filed the instant appeal. CP 133.

ARGUMENT

I. The trial court acted within its sound discretion by requiring Blount to register as a felony firearm offender.

Blount argues the trial court improperly ordered him to register as a felony firearm offender. However, the trial court acted within its sound discretion by requiring Blount to so register. The trial court's decision should be affirmed.

At sentencing on a felony firearm offense, the sentencing court must consider whether to require the defendant to register as a felony firearm offender. RCW 9.41.333. It is within the trial court's discretion whether to impose this requirement. RCW 9.41.330(1). The list of factors the trial court should consider in determining whether to require a defendant to register as a felony firearm offender is not exhaustive, but includes considering the person's criminal history, whether the defendant has previously been found not guilty by reason of insanity of any offense, and evidence of the defendant's propensity for violence that would likely endanger persons. RCW 9.41.330(2). The court shall also consider other relevant facts. *Id.* "By using the 'including, but not limited to' language in the statutory provision, the legislature afforded courts wide latitude in

their registration determinations.” *State v. King*, 196 Wn.App. 1063, slip op. at 2 (Div. 2, 2016) (citing to *State ex rel. Graham v. Northshore Sch. Dist No. 417*, 99 Wn.2d 232, 238, 662 P.2d 38 (1983)).¹

This Court reviews the trial court’s decision on felony firearm registration for an abuse of discretion. *See State v. Miller*, 159 Wn.App. 911, 918, 247 P.3d 457, *review denied*, 172 Wn.2d 1010 (2011). A sentencing court abuses its discretion if the decision is “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Id* (quoting *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)). “A decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported in the record or was reached by applying the wrong legal standard.” *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (internal quotation marks omitted).

Notably, RCW 9A.02.030 “does not dictate that a sentencing court must explicitly articulate its consideration of each factor when determining whether to impose the [felony firearm] registration requirement.” *King*, 196 Wn.App. 1063, slip op. at 2.² Yet in this case, the trial court did articulate its consideration of the relevant factors in the

¹ GR 14.1 allows citation to unpublished opinions of the Court of Appeals that were issued on or after March 1, 2013. This opinion is not binding precedent and may be given as much persuasive value as this Court chooses.

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judgment and sentence. CP 120. There, the trial court considered evidence of the defendant's propensity for violence that would likely endanger persons. CP 120. Though only marking one of the three statutory factors, this is sufficient to support the trial court's finding. Blount appears to argue the trial court needed to have found more than one statutory factor applied before imposing the requirement that he register as a felony firearm offender. *See* Br. of Appellant, pp. 6-8. However, this contention would write in a requirement to the statute that does not exist and for which there is no evidence the legislature intended to require. It may be that a defendant's criminal history alone is sufficient to support a trial court's finding that an offender should register as a felony firearm offender, or that the defendant's propensity for violence may concern the court enough to require the defendant to register. Here, it is clear from the judgment and sentence that the trial court considered the proper factors and was concerned enough about the defendant's propensity for violence that it warranted requiring him to register.

In *King, supra*, this Court affirmed the trial court's decision to require the defendant to register as a felony firearm offender when there was evidence the trial court considered the relevant factors in determining

whether to make the defendant register. *King*, slip op. at 2.³ The same is true here – the trial court considered the appropriate legal standard in assessing whether Blount should have to register as a felony firearm offender. Thus the trial court’s decision was not based on untenable grounds or made for untenable reasons. The final standard of an abuse of discretion analysis is whether the trial court’s decision was manifestly unreasonable. Blount argues that a one time show of violence simply cannot support a finding that a defendant should register as a felony firearm offender. This is simply not true.

Blount’s act was extremely aggressive and violent. He intervened in an argument that did not involve him and admittedly pointed a gun at a man’s head - a man who was much smaller than he was and who had no weapons whatsoever. The facts of this case alone support the trial court’s decision to have Blount register as a felony firearm offender. Based on Blount’s extremely rash act to point a gun at someone’s face over an argument that did not involve him, the court was entirely within its discretion to find that Blount had a “propensity for violence that would likely endanger persons.” Blount showed through this act that his propensity for violence does endanger other persons. No matter whether

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he perceived a threat or not, his perception was off, as he admitted on the stand (claiming to be in the middle of a PTSD flashback). Thus he is likely to endanger other persons. The trial court has the discretion and is in the best position to determine whether Blount should register as a firearm offender. The trial court duly exercised its discretion here and its decision should be affirmed.

II. The State agrees that the scrivener's error on the judgment and sentence should be corrected.

Blount notes there is a scrivener's error on page 1 of the judgment and sentence, noting the jury verdict occurred on July 9, 2018, when in reality the jury's verdict was returned on July 3, 2018. This Court should direct the trial court to enter an order amending the judgment and sentence to note the correct date of the jury's verdict. *See State v. Naillieux*, 158 Wn.App. 630, 646, 241 P.3d 1280 (2010).

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CONCLUSION

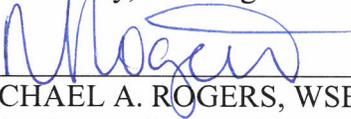
The trial court should be affirmed in its decision to have Blount register as a felony firearm offender, and the matter should be remanded to correct the scrivener's error in the judgment and sentence.

DATED this 12th day of August, 2019.

Respectfully submitted:

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