

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

NATHAN WADE POGUE,
Defendant-Appellant.

Deschutes County Circuit Court
15CR37239; A161594

Walter Randolph Miller, Jr, Judge.

Submitted December 18, 2017.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Neil F. Byl, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Michael A. Casper, Assistant Attorney General, filed the brief for respondent.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Shorr, Judge.

PER CURIAM

Remanded for entry of a corrected judgment deleting all references to “constituting domestic violence”; otherwise affirmed.

PER CURIAM

Defendant appeals a judgment of conviction for felon in possession of a firearm (Count 1), unlawful use of a weapon (Counts 2 and 3), and menacing (Counts 4 and 5). He assigns error to the trial court's entry of judgment designating Counts 2, 3, and 4 as crimes "constituting domestic violence," ORS 132.586.¹ The state concedes that the trial court's insertion of the phrase "constituting domestic violence" in Counts 2 through 4 was error because the state never alleged that Count 3 was a crime constituting domestic violence and because the state decided not to pursue proof of that element with regard to Counts 2 and 4. We agree, accept the state's concession, and remand for entry of a corrected judgment that deletes all references to the "constituting domestic violence" element from the judgment of conviction. *See State v. Neighbors*, 283 Or App 488, 489, 388 P3d 1250 (2017). We otherwise affirm defendant's judgment of conviction.²

Remanded for entry of a corrected judgment deleting all references to "constituting domestic violence"; otherwise affirmed.

¹ ORS 132.568 provides, in part:

"(2) When a crime involves domestic violence, the accusatory instrument may plead, and the prosecution may prove at trial, domestic violence as an element of the crime. When a crime is so pleaded, the words 'constituting domestic violence' may be added to the title of the crime."

² Defendant also assigns error to the trial court's jury instruction allowing nonunanimous guilty verdicts. We reject that assignment of error without published discussion.