

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

ERIC MICHAEL BORCHMAN,
Defendant-Appellant.

Coos County Circuit Court
19CR06508; A170729

Andrew E. Combs, Judge.

Submitted July 15, 2020.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Zachary Lovett Mazer, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Daniel Norris, Assistant Attorney General, filed the brief for respondent.

Before Lagesen, Presiding Judge, and James, Judge, and Kamins, Judge.

PER CURIAM

Reversed and remanded.

PER CURIAM

Defendant appeals a judgment of conviction for nine offenses. On each of the nine counts, the jury found defendant guilty by a nonunanimous verdict. In his first assignment of error, defendant claims that the trial court erred in admitting a prior consistent statement of a witness. The balance of defendant's assignments of error challenge as plain error the court's decision to instruct the jury that it could return nonunanimous verdicts and its acceptance of nonunanimous verdicts. As the state concedes, the court plainly erred in accepting the nonunanimous verdicts in view of the Supreme Court's decision in *Ramos v. Louisiana*, ___ US ___, 140 S Ct 1390, 206 L Ed 2d 583 (2020). For the reasons similar to those articulated in *State v. Ulery*, 366 Or 500, 464 P3d 1123 (2020), we accept the state's concession and exercise our discretion to correct that plain error. We do not address defendant's claim of evidentiary error, because the evidence may develop differently on retrial. See *State v. Wellington*, 304 Or App 455, 456, 466 P3d 96 (2020) (taking analogous approach).

Reversed and remanded.