

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

CARL D. TODD, JR.,
Defendant-Appellant.

Washington County Circuit Court
19CR53379; A173692

Andrew Erwin, Judge.

Submitted October 14, 2021.

Eric W. Nicholson and The Law Offices of Eric Nicholson filed the brief for appellant.

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

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

PER CURIAM

Convictions on Counts 1, 3, and 4 reversed and remanded; remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant was found guilty by a jury of six offenses. For three of the counts, the jury returned nonunanimous guilty verdicts: unlawful use of a weapon, ORS 166.220 (Count 1); and two counts of second-degree use of a stun gun, tear gas or mace, ORS 163.212 (Counts 3 and 4). For the other three counts, the jury returned unanimous guilty verdicts: menacing, ORS 163.190 (Count 2); second-degree use of a stun gun, tear gas or mace, ORS 163.212 (Count 5); and reckless driving, ORS 811.140 (Count 6). The trial court merged the guilty verdict for Count 2 into Count 1.

On appeal, defendant argues that the trial court plainly erred by accepting the jury's nonunanimous guilty verdicts. *Ramos v. Louisiana*, 590 US ___, 140 S Ct 1390, 206 L Ed 2d 583 (2020). The state concedes the error. We agree, accept the concession, and exercise our discretion to correct the plain error. *State v. Ulery*, 366 Or 500, 503, 464 P3d 1123 (2020). Defendant's challenges to the unanimous guilty verdicts for Counts 2, 5, and 6 are foreclosed by *State v. Kincheloe*, 367 Or 335, 478 P3d 507 (2020), and we therefore reject them.

Convictions on Counts 1, 3, and 4 reversed and remanded; remanded for resentencing; otherwise affirmed.