

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

JOSHUA MAURICE BALLARD,
Defendant-Appellant.

Marion County Circuit Court
17CR65181; A168772

J. Channing Bennett, Judge.

Submitted March 31, 2020.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and

Patrick M. Ebbett, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Shorr, Judge, and James, Judge.

PER CURIAM

Reversed and remanded.

PER CURIAM

Defendant was found guilty by nonunanimous jury verdicts of first-degree robbery, ORS 164.415, and unlawful use of a weapon, ORS 166.220. Defendant argues that the trial court's acceptance of nonunanimous verdicts constitutes plain error under the Sixth Amendment to the United States Constitution. In *Ramos v. Louisiana*, ___ US ___, 140 S Ct 1390, 206 L Ed 2d 583 (2020), the United States Supreme Court concluded that nonunanimous jury verdicts violated the Sixth Amendment. In *State v. Ulery*, 366 Or 500, 504, ___ P3d ___ (2020), the Oregon Supreme Court concluded that a trial court's acceptance of a nonunanimous verdict constituted plain error. Further, the court exercised its discretion to correct that error in light of the gravity of the error and because failure to raise the issue in the trial court did not weigh heavily against correction as the trial court would not have been able to correct the error under controlling law.

The state concedes that the trial court's acceptance of nonunanimous verdicts in this case constitutes plain error. For the reasons set forth in *Ulery*, we exercise our discretion to correct that error. Our disposition obviates the need to address defendant's remaining argument.

Reversed and remanded.