

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

LILA LARAE McCOVEY,
Defendant-Appellant.

Coos County Circuit Court
18CR59542; A170848

Martin E. Stone, Judge.

Submitted July 2, 2020.

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

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

Before DeVore, Presiding Judge, and DeHoog, Judge, and Mooney, Judge.

PER CURIAM

Reversed and remanded.

PER CURIAM

Defendant was convicted of unlawful possession of methamphetamine, ORS 475.894, following a nonunanimous jury verdict. On appeal, defendant contends that the trial court plainly erred when it instructed the jury that it could reach a nonunanimous verdict and in accepting the nonunanimous verdict. The state concedes that the court erred and that we should exercise our discretion to correct it. We agree with the parties. 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, 464 P3d 1123 (2020), the Oregon Supreme Court concluded that a trial court's acceptance of a nonunanimous verdict constituted plain error and exercised discretion to correct that error in light of the gravity of the error and because failure to raise the error in the trial court did not weigh heavily against its correction as the trial court would not have been able to correct the error under controlling law. For the reasons set forth in *Ulery*, we exercise our discretion to correct the error in this case.

Reversed and remanded.