

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

TRISTAN ANTHONY FRANK-VIDALES,  
*Defendant-Appellant.*

Josephine County Circuit Court  
19CR61427; A173745

Pat Wolke, Judge.

Submitted September 4, 2020.

Frances J. Gray filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Jennifer S. Lloyd, 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 by nonunanimous jury verdict of unlawful use of a weapon with a firearm, ORS 166.220, unauthorized use of a motor vehicle, ORS 164.135, and two counts of first-degree robbery with a firearm, ORS 164.415. Defendant contends that the trial court's acceptance of a nonunanimous verdict on each of those charges 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 State Supreme Court concluded that nonunanimous jury verdicts violate the Sixth Amendment. In *State v. Ulery*, 366 Or 500, 504, 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. The court concluded that failure to raise the error in the trial court did not weigh heavily against correction of the error because the trial court would not have been able to correct it under controlling law. *Id.* The state concedes that the trial court's acceptance of a nonunanimous verdict in this case constitutes plain error. For the reasons set forth in *Ulery*, we exercise our discretion to correct the error in this case.

Reversed and remanded.