

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

KEVIN RAYMOND SULLIVANT,
Defendant-Appellant.

Benton County Circuit Court
17CR73835; A167718

Matthew J. Donohue, Judge.

Submitted March 4, 2021; on respondent's motion to dismiss filed February 18, 2021.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Eric Johansen, Deputy Public Defender, Office of Public Defense Services, filed the briefs for appellant.

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

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

PER CURIAM

Motion to dismiss denied; reversed and remanded.

PER CURIAM

Defendant was convicted by a jury of one count of aggravated harassment, ORS 166.070, a felony; two counts of attempted aggravated harassment, ORS 161.405(2)(d); and one count of disorderly conduct, ORS 166.025. The last three offenses are misdemeanors. Each conviction was by a nonunanimous verdict. On appeal, he contends that the trial court plainly erred in accepting the nonunanimous verdicts on all counts and that his convictions should be reversed and remanded for that reason.

While this appeal has been pending, the state moved to dismiss on the ground that defendant had absconded from justice. *See* ORAP 8.05(3). We have since been notified that defendant is in custody; therefore, he is no longer on “abscond status” within the meaning of ORAP 8.05(3). *State v. Lazarides*, 358 Or 728, 736, 369 P3d 1174 (2016). For that reason, we deny the motion to dismiss.

Proceeding to the merits of the appeal, under current case law, the trial court plainly erred. *State v. Ulery*, 366 Or 500, 504, 464 P3d 1123 (2020); *State v. Bush*, 311 Or App 242, 243, 486 P3d 49 (2021); *State v. Heine*, 310 Or App 14, 21, 484 P3d 391 (2021). For the reasons stated in *Ulery* and *Bush*, we exercise our discretion to correct the errors. *See Ulery*, 366 Or at 504; *Bush*, 311 Or App at 243.

Motion to dismiss denied; reversed and remanded.