

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

LEO GABONIA,  
*Defendant-Appellant.*

Washington County Circuit Court  
18CR17436; A170498

Janelle F. Wipper, Judge.

Submitted June 5, 2020.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Neil F. Byl, Deputy Public Defender, Office of Public Defense Services, filed the briefs 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 Powers, Judge.

PER CURIAM

Counts 2, 4, and 8 reversed and remanded; remanded for resentencing; otherwise affirmed.

**PER CURIAM**

Defendant was convicted by jury on two counts of first-degree sodomy (Counts 1 and 2); two counts of first-degree unlawful sexual penetration (Counts 3 and 4); three counts of first-degree sexual abuse (Counts 5, 7, and 8); and one count of luring a minor (Count 9). Defendant argues on appeal that the court erred in instructing the jury that it could return nonunanimous verdicts, and in accepting nonunanimous verdicts on Counts 2, 4, and 8. He also challenges the constitutionality of his sentence. The state concedes that defendant's convictions on Counts 2, 4, and 8, based on nonunanimous verdicts, must be reversed in light of *Ramos v. Louisiana*, 590 US \_\_\_, 140 S Ct 1390, 206 L Ed 2d 583 (2020). We agree and accept that concession. Because our reversal on those counts requires resentencing it obviates the need to address defendant's sentencing arguments. Defendant argues that his remaining convictions also should be reversed based on the erroneous nonunanimous verdict instruction. We reject that argument for the reasons set forth in *State v. Flores Ramos*, 367 Or 292, \_\_\_ P3d \_\_\_ (2020), in which the court concluded that the erroneous nonunanimous jury instruction was harmless with respect to unanimous verdicts.

Counts 2, 4, and 8 reversed and remanded; remanded for resentencing; otherwise affirmed.