

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

VIRGIL VERN MILES,
Defendant-Appellant.

Clackamas County Circuit Court
18CR75297; A171148

Douglas V. Van Dyk, Judge.

Submitted July 20, 2021.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Christopher A. Perdue, Assistant Attorney General, filed the brief for respondent.

Before DeVore, Presiding Judge, and DeHoog, Judge, and Sercombe, Senior Judge.

PER CURIAM

Conviction on Count 5 reversed and remanded; remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant was convicted based on unanimous jury verdicts on two counts of first-degree sodomy (Counts 1 and 2) and one count of first-degree sexual abuse (Counts 3). The jury returned a nonunanimous guilty verdict on a second count of first-degree sexual abuse (Count 5). On appeal, defendant contends that the court plainly erred in instructing the jury that it could return nonunanimous verdicts, and plainly erred in accepting a nonunanimous verdict on Count 5. See *Ramos v. Louisiana*, 590 US ___, 140 S Ct 1390, 206 L Ed 2d 583 (2020) (nonunanimous verdicts for serious offenses violate the Sixth Amendment to the United States Constitution). The state concedes the error as to the nonunanimous verdict but asserts that the error was harmless as to the unanimous verdicts. We agree with the state and accept its concession that the acceptance of the nonunanimous verdict constituted plain error. *State v. Ulery*, 366 Or 500, 503-04, 464 P3d 1123 (2020) (trial court's acceptance of a nonunanimous jury verdict is plain error). For the reasons expressed in *Ulery*, we exercise our discretion to correct the error. We reject defendant's challenge to the jury verdicts that were unanimous for the reasons set forth in *State v. Flores Ramos*, 367 Or 292, 294, 334, 478 P3d 515 (2020), and *State v. Kincheloe*, 367 Or 335, 478 P3d 507 (2020).

Conviction on Count 5 reversed and remanded; remanded for resentencing; otherwise affirmed.