

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

KENT RICHARDSON,  
aka Kent R. Richardson,  
*Defendant-Appellant.*

Multnomah County Circuit Court  
18CR59962; A171458

Michael A. Greenlick, Judge.

Submitted December 22, 2020.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and E. Nani Apo, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Shorr, Judge, and Powers, Judge.

PER CURIAM

Count 1 reversed and remanded; remanded for resentencing; otherwise affirmed.

**PER CURIAM**

Defendant was convicted by jury verdict of delivery of methamphetamine (Count 1) and possession of methamphetamine (Count 2). The jury was instructed that its verdicts need not be unanimous, which was error under the Sixth Amendment. *See Ramos v. Louisiana*, 590 US \_\_\_, 140 S Ct 1390, 206 L Ed 2d 583 (2020). The jury was unanimous as to Count 2, but not as to Count 1.

On appeal, defendant argues that the trial court plainly erred in giving the nonunanimous jury instruction, that the error was structural error, and that both of his convictions therefore should be reversed. The state concedes that defendant is entitled to reversal on the nonunanimous count. We agree and accept the concession, and exercise discretion to correct the error for the reasons set forth in *State v. Ulery*, 366 Or 500, 464 P3d 1123 (2020). As for defendant's structural error argument concerning the remaining conviction, he makes the same arguments that were rejected in *State v. Kincheloe*, 367 Or 335, \_\_\_ P3d \_\_\_ (2020), and its companion cases.

Count 1 reversed and remanded; remanded for resentencing; otherwise affirmed.