

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

DENNIS GENE SARVER,
Defendant-Appellant.

Polk County Circuit Court
19CR33803; A171700

Rafael A. Caso, Judge.

Submitted May 21, 2021.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Meredith Allen, 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 Armstrong, Presiding Judge, and Tookey, Judge, and Aoyagi, Judge.

PER CURIAM

Conviction on Count 2 reversed and remanded; remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant was found guilty by nonunanimous jury verdict of first-degree manslaughter (Count 2), ORS 163.118. Defendant was found guilty by unanimous jury verdict of second-degree manslaughter (Count 3), ORS 163.125, and unlawful use of a weapon (Count 4), ORS 166.220. Defendant argues that the trial court erred in instructing the jury, over his objection, that it could return nonunanimous verdicts, and in accepting a nonunanimous verdict on Count 2. The state concedes that the trial court's acceptance of a nonunanimous verdict on Count 2 constitutes error that 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 the concession.

With respect to the convictions based on unanimous verdicts, we reject defendant's structural-error argument for the reasons stated in *State v. Flores Ramos*, 367 Or 292, 478 P3d 515 (2020).

Conviction on Count 2 reversed and remanded; remanded for resentencing; otherwise affirmed.