

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

WILLIAM HARRISON GIBBENS,  
*Defendant-Appellant.*

Marion County Circuit Court  
18CR47115; A171916

Courtland Geyer, Judge.

Submitted June 2, 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 Jennifer S. Lloyd, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

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

**PER CURIAM**

Defendant was convicted by unanimous jury verdict of first-degree sexual abuse (Count 1), ORS 163.427, and by nonunanimous jury verdict of first-degree sodomy (Count 2), ORS 163.405. He argues on appeal that the trial court erred in instructing the jury, over his objection, that it could return nonunanimous verdicts. He also argues that this constitutes structural error and that he is entitled to reversal of the conviction based on the unanimous verdict as well as the nonunanimous verdict. The state concedes the error with respect to the nonunanimous verdict on Count 2, in light of *Ramos v. Louisiana*, 590 US \_\_\_, 140 S Ct 1390, 206 L Ed 2d 583 (2020). We agree and accept that concession. Defendant argues that his remaining conviction also should be reversed based on the erroneous nonunanimous verdict instruction. We reject defendant's argument that his conviction based on a unanimous verdict also must be reversed. See *State v. Flores Ramos*, 367 Or 292, 478 P3d 515 (2020) (erroneous nonunanimous jury instruction was not structural error and was harmless with respect to unanimous verdicts).

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