

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

ROBERT GUADALUPE GUERRERO,
Defendant-Appellant.

Marion County Circuit Court
18CR58854; A172271

Thomas M. Hart, Judge.

Submitted June 15, 2021.

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 Kirsten M. Naito, Assistant Attorney General, filed the brief for respondent.

Before DeVore, Presiding Judge, and DeHoog, Judge, and Mooney, Judge.

PER CURIAM

Conviction on Count 4 reversed and remanded; remanded for resentencing; otherwise affirmed.

PER CURIAM.

Defendant was convicted by unanimous jury verdict on one count of second-degree assault (Count 1) and two counts of fourth-degree assault constituting domestic violence (Counts 2 and 3) and convicted by nonunanimous jury verdict on one count of unlawful use of a weapon (Count 4). On appeal, defendant argues that the trial court erred in failing to give a requested jury instruction on less satisfactory evidence, erred in instructing the jury that it could return a nonunanimous verdict, and plainly erred in accepting a nonunanimous verdict on Count 4. We reject without discussion defendant's argument concerning the jury instruction on less satisfactory evidence. 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), and *State v. Kincheloe*, 367 Or 335, 478 P3d 507 (2020), *cert den*, ___ US ___ (2021). The state concedes that the trial court's acceptance of a nonunanimous verdict on Count 4 constitutes plain error and that that conviction 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, and we exercise our discretion to correct the error for the reasons set forth in *State v. Ulery*, 366 Or 500, 464 P3d 1123 (2020).

Conviction on Count 4 reversed and remanded; remanded for resentencing; otherwise affirmed.