

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

YESSICA GURROLA,
Defendant-Appellant.

Marion County Circuit Court
19CR44748; A173354

Thomas M. Hart, Judge.

Submitted October 7, 2021.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Peter G. Klym, Deputy Public Defender, Office of Public Defense Services, filed the briefs for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Susan G. Howe, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

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

PER CURIAM

Defendant appeals a judgment convicting her of unauthorized use of a vehicle, ORS 164.135 (Count 2), and resisting arrest, ORS 162.315 (Count 3). The conviction for unauthorized use of a vehicle was based on a nonunanimous jury verdict; the jury verdict on resisting arrest was unanimous. On appeal, defendant first argues that the trial court erred in denying her motion for judgment of acquittal on the unauthorized use of a vehicle charge; we reject that argument without discussion. Defendant also 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 2. *See Ramos v. Louisiana*, 590 US ___, 140 S Ct 1390, 206 L Ed 2d 583 (2020) (nonunanimous verdicts 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. 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 unanimous verdict on Count 3 for the reasons set forth in *State v. Flores Ramos*, 367 Or 292, 294, 334, 478 P3d 515 (2020).

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