

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

JOHN WILLIAM MILLER III,
Defendant-Appellant.

Washington County Circuit Court
18CR41405; A173375

Oscar Garcia, Judge.

Submitted July 7, 2021.

George W. Kelly filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Julia Glick, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Reversed and remanded.

PER CURIAM

Defendant appeals a judgment of conviction for five counts of first-degree sexual abuse, ORS 163.427. Defendant's case was tried to a jury, and that jury did not reach unanimity on any of the five counts of conviction.

Defendant first assigns error to the denial of his motion for judgment of acquittal on Counts 2, 3, and 5, contending that the evidence was not legally sufficient to allow a finding that defendant touched what qualified as "the sexual or other intimate parts" of the victim's body, as the state was required to prove. ORS 163.427(1)(a)(A) (2020), *amended by* Or Laws 2021, ch 82, § 7; ORS 163.305(6) (2020), *amended by* Or Laws 2021, ch 82, § 1. Viewing the evidence in the light most favorable to the state, as we must on review of the denial of a motion for judgment of acquittal, *State v. Cunningham*, 320 Or 47, 63, 880 P2d 431 (1994), *cert den*, 514 US 1005 (1995), we reject that contention.

Defendant next assigns error to the trial court's instruction to the jury that it could find defendant guilty by nonunanimous verdicts. As the state concedes, under *Ramos v. Louisiana*, 590 US ___, 140 S Ct 1390, 206 L Ed 2d 583 (2020), defendant is entitled to reversal of all of his convictions, and a remand for retrial, because each conviction was based on a nonunanimous verdict in violation of the Sixth Amendment to the United States Constitution.

Reversed and remanded.