

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

DAVID ALEXANDER BEDINGER,
Defendant-Appellant.

Yamhill County Circuit Court
19CR74565; A173391

John L. Collins, Judge.

Submitted October 4, 2021.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Anna Belais, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, and 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

Convictions on Counts 2 and 4 reversed and remanded; remanded for resentencing; otherwise affirmed.

PER CURIAM

A jury unanimously found defendant guilty of harassment (Count 5) and nonunanimously found defendant guilty of menacing constituting domestic violence (Count 2) and fourth-degree assault constituting domestic violence (Count 4). He was acquitted on Counts 1 and 3. On appeal, defendant contends that the court plainly erred in instructing the jury that it could return nonunanimous verdicts, and plainly erred in accepting nonunanimous verdicts on Counts 2 and 4. *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 in instructing the jury but asserts that the error was harmless as to the unanimous verdict. We agree with the state and accept its concession that the acceptance of the nonunanimous verdicts 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 for the reasons set forth in *State v. Flores Ramos*, 367 Or 292, 294, 334, 478 P3d 515 (2020).

Convictions on Counts 2 and 4 reversed and remanded; remanded for resentencing; otherwise affirmed.