

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

JEREMIAH ANDREW LIBBEE,
Defendant-Appellant.

Washington County Circuit Court
19CR38893; A172151

Janelle F. Wipper, Judge.

Submitted February 28, 2022.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and David Sherbo-Huggins, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Jordan R. Silk, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Powers, Judge, and Hellman, Judge.

PER CURIAM

Counts 4 and 5 reversed and remanded; remanded for resentencing; otherwise affirmed.

PER CURIAM

A jury convicted defendant of second-degree assault, ORS 163.175 (Count 1); third-degree assault, ORS 163.165 (Counts 2 and 3); failure to perform the duties of a driver, ORS 811.705 (Counts 4 and 5); fleeing or attempting to elude a police officer, ORS 811.540 (Count 6); reckless driving, ORS 811.140 (Count 7); and driving while suspended or revoked, ORS 811.182(4) (Count 9).¹ The jury was unanimous as to all verdicts, except Counts 4 and 5. The guilty verdicts on Counts 2 and 3 were merged into the verdict on Count 1, and the verdict on Count 5 was merged into the verdict on Count 4.

On appeal, defendant raises four assignments of error. We reject without written discussion defendant's first two assignments. In assignments three and four, defendant argues, and the state concedes, that the trial court erred under *Ramos v. Louisiana*, 590 US ___, 140 S Ct 1390, 206 L Ed 2d 583 (2020), *State v. Ulery*, 366 Or 500, 464 P3d 1123 (2020), and *State v. Flores Ramos*, 367 Or 292, 478 P3d 515 (2020), in instructing the jury that it may return nonunanimous guilty verdicts and in accepting nonunanimous verdicts on Counts 4 and 5. We agree and accept the state's concession. Accordingly, we reverse and remand defendant's conviction on Count 4. The guilty verdict for Count 5, which the trial court merged into Count 4 and therefore disposed of without a conviction, must also be reversed and remanded.

Counts 4 and 5 reversed and remanded; remanded for resentencing; otherwise affirmed.

¹ Defendant was acquitted of Driving Under the Influence of Intoxicants, ORS 813.010 (Count 8).