

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

GERLINDE SPRING LYNCH,
Defendant-Appellant.

Linn County Circuit Court
19CR54294; A173858

Thomas McHill, Judge.

Submitted December 22, 2021.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Patrick M. Ebbett, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Conviction on Count 6 reversed and remanded; remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant was convicted after a jury trial on three counts of second-degree criminal mischief (Counts 1, 3 and 4); one count of first-degree criminal mischief (Count 2); and two counts of first-degree theft (Counts 5 and 6). The jury was unanimous as to all counts except for Count 6. Defendant argues that the trial court plainly erred in instructing the jury that it could return nonunanimous verdicts. He also argues that this constitutes structural error and that he is entitled to reversal of the conviction based on the unanimous verdict as well as the nonunanimous verdict. The state concedes that the court committed plain error with respect to the nonunanimous verdict on Count 6, in light of *Ramos v. Louisiana*, 590 US ___, 140 S Ct 1390, 206 L Ed 2d 583 (2020). We agree and accept that concession. We exercise our discretion to correct the error for the reasons set forth in *State v. Ulery*, 366 Or 500, 464 P3d 1123 (2020). Defendant also argues that his remaining convictions should be reversed based on the erroneous nonunanimous verdict instruction. We reject defendant's argument that his conviction based on a unanimous verdict also must be reversed. See *State v. Flores Ramos*, 367 Or 292, 478 P3d 515 (2020) (erroneous nonunanimous jury instruction was not structural error and was harmless with respect to unanimous verdicts).

Conviction on Count 6 reversed and remanded; remanded for resentencing; otherwise affirmed.