

**FILED: December 1, 2021**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

CARL D. TODD, JR.,  
Defendant-Appellant.

Washington County Circuit Court  
19CR53379

A173692

Andrew Erwin, Judge.

Submitted on October 14, 2021.

Eric W. Nicholson and The Law Offices of Eric Nicholson 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 Armstrong, Presiding Judge, and Tookey, Judge, and Aoyagi, Judge.

PER CURIAM

Convictions on Counts 1, 3, and 4 reversed and remanded; remanded for resentencing; otherwise affirmed.

---

**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Appellant

[ ]	No costs allowed.
[ ]	Costs allowed, payable by
[ ]	Costs allowed, to abide the outcome on remand, payable by

---

1 PER CURIAM

2 Defendant was found guilty by a jury of six offenses. For three of the  
3 counts, the jury returned nonunanimous guilty verdicts: unlawful use of a weapon, ORS  
4 166.220 (Count 1); and two counts of second-degree use of a stun gun, tear gas or mace,  
5 ORS 163.212 (Counts 3 and 4). For the other three counts, the jury returned unanimous  
6 guilty verdicts: menacing, ORS 163.190 (Count 2); second-degree use of a stun gun, tear  
7 gas or mace, ORS 163.212 (Count 5); and reckless driving, ORS 811.140 (Count 6). The  
8 trial court merged the guilty verdict for Count 2 into Count 1.

9 On appeal, defendant argues that the trial court plainly erred by accepting  
10 the jury's nonunanimous guilty verdicts. *Ramos v. Louisiana*, 590 US \_\_\_, 140 S Ct  
11 1390, 206 L Ed 2d 583 (2020). The state concedes the error. We agree, accept the  
12 concession, and exercise our discretion to correct the plain error. *State v. Ulery*, 366 Or  
13 500, 503, 464 P3d 1123 (2020). Defendant's challenges to the unanimous guilty verdicts  
14 for Counts 2, 5, and 6 are foreclosed by *State v. Kincheloe*, 367 Or 335, 478 P3d 507  
15 (2020), and we therefore reject them.

16 Convictions on Counts 1, 3, and 4 reversed and remanded; remanded for  
17 resentencing; otherwise affirmed.