

SUPREME COURT



Media Release

COPIES:

Copies of the slip opinions may be obtained from the Appellate Records Section, (503) 986-5555
The full text of these opinions can be found at www.courts.oregon.gov/publications

Contact:

Stephen P. Armitage
Staff Attorney
(503) 986-7023

Cases decided June 4, 2020.

State of Oregon v. Adrian James Ulery, (CC 17CR79026) (CA A166945) (SC S067084)

On review from the Court of Appeals in an appeal from the Polk County Circuit Court, Monte S. Campbell, Judge. 299 Or App 279, 449 P3d 590 (2019). The petition for review is allowed. The decision of the Court of Appeals is reversed. The judgment of the circuit court is reversed, and the case is remanded to the circuit court for further proceedings. Opinion of the Court Per Curiam.

Today, the Oregon Supreme Court accepted the state's concession that defendant's unreserved Sixth Amendment challenge to his convictions based on nonunanimous jury verdicts qualified for plain error review and exercised its discretion to review the error.

Adrian James Ulery (defendant) was charged with two counts of first-degree sexual abuse. The jury was instructed that ten out of twelve votes were sufficient to support a guilty verdict. Defendant did not object to that instruction, which was required by Oregon law at the time. The jury convicted defendant on both counts. A poll of the jury revealed that the verdicts were nonunanimous. The trial court received the verdicts without objection by defendant.

On appeal, defendant raised a Sixth Amendment challenge to the trial court's receipt of nonunanimous guilty verdicts, arguing that the issue should be reviewed as plain error. The Court of Appeals affirmed without opinion. Subsequently, the United States Supreme Court issued a decision in *Ramos v. Louisiana*, 590 US ___, 140 S Ct 1390 (2020), in which it held that the United States Constitution forbids states from basing convictions for nonpetty offenses on nonunanimous jury verdicts. In light of *Ramos*, the state conceded that defendant's assignment of error met the criteria for plain error review, and that the Oregon Supreme Court should reverse defendant's convictions if the Court exercised its discretion to review the error.

In a per curiam opinion, the Oregon Supreme Court accepted the state's

concession. The Court explained that an unpreserved assignment of error is reviewable only if the error is plain, which requires that the error be obvious and appear on the face of the record. The Court held that, because of the United States Supreme Court's decision in *Ramos*, the error was now obvious, and that it appeared on the face of the record because the jury was polled.

The Court further explained that even when an error is plain, an appellate court has discretion to decide whether to review it. The Court determined that it would exercise its discretion to review the error, based on a number of factors. The Court observed that defendant's failure to object in the trial court did not weigh heavily in the analysis, because the trial court would not have been able to correct the error under then-controlling law. The Court reasoned that the error was a grave one, and that defendant had an interest in a retrial, because members of the jury had concluded that the state had not proved its case against him beyond a reasonable doubt. The Court therefore reversed defendant's convictions and remanded the case to the circuit court.

State of Oregon v. Olan Jermaine Williams, (CC 15CR58698) (CA A163895) (SC S066872)

On review from the Court of Appeals in an appeal from the Multnomah County Circuit Court, Bronson D. James, Judge. 297 Or App 16, 441 P3d 710 (2019). The petition for review is allowed, limited to the issue of the appropriate disposition of this case in light of *Ramos v. Louisiana*. The decision of the Court of Appeals is reversed. The judgment of the circuit court is reversed, and the case is remanded to the circuit court for further proceedings. Opinion of the Court Per Curiam.

Today the Oregon Supreme Court concluded that it would consider defendant's Sixth Amendment challenge to his conviction based on a nonunanimous jury verdict, accepted the state's concession the trial court plainly erred, and reversed defendant's conviction.

Olan Jermaine Williams (defendant) was tried for two counts of first-degree sodomy. The jury acquitted him of one count and convicted him of the other, by a nonunanimous vote. Defendant did not object to the receipt of the verdict, but he subsequently sought a new trial, arguing that use of a nonunanimous jury, as applied to him, violated the Equal Protection Clause. The trial court denied the motion for a new trial. Defendant appealed, arguing that the trial court had erred in denying his motion for a new trial. He did not argue that the receipt of the nonunanimous guilty verdict violated the Sixth Amendment. The Court of Appeals affirmed defendant's conviction. He then filed a petition for review, raising a Sixth Amendment challenge to his conviction. Subsequently, the United States Supreme Court decided *Ramos v. Louisiana*, 590 US ___, 140 S Ct 1390 (2020), in which it held that the United States Constitution forbids states from basing convictions for nonpetty offenses on nonunanimous jury verdicts. In

light of *Ramos*, the state conceded that defendant's assignment of error met the criteria for plain error review and that the Oregon Supreme Court should reverse defendant's conviction if the court exercised its discretion to review the error.

In a per curiam opinion, the Oregon Supreme Court reasoned that, to the extent that defendant's failure to raise the Sixth Amendment issue in the Court of Appeals would preclude review, the Court would find "good cause" to waive the Rules of Appellate Procedure under ORAP 1.20(5), given the issuance of *Ramos* and the timing of defendant's filings. The Court explained that, for the reasons given in *State v. Ulery*, ___ Or ___, ___ P3d ___ (2020), also issued today, it would accept the state's concession that the Sixth Amendment issue met the requirements for plain error review and would exercise its discretion to correct the error. The Court therefore reversed defendant's conviction.