

FILED: February 13, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

DUSTY KEATON EPPS,
Defendant-Appellant.

Marion County Circuit Court
10C44332

A146792

John B. Wilson, Judge.

Submitted on January 17, 2013.

Peter Gartlan, Chief Defender, and Kali Montague, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

John R. Kroger, Attorney General, Anna M. Joyce, Solicitor General, and Patrick M. Ebbett, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Nakamoto, Judge, and De Muniz, Senior Judge.

PER CURIAM

Reversed and remanded with instructions to merge the guilty verdicts for possession of a stolen vehicle and unauthorized use of a vehicle into two convictions for unauthorized use of a vehicle and for resentencing; otherwise affirmed.

1 PER CURIAM

2 Defendant appeals a judgment of conviction for two counts of unauthorized
3 use of a vehicle, ORS 164.135, and two counts of possession of a stolen vehicle, ORS
4 819.300. On appeal, he raises six assignments of error. We reject without discussion
5 defendant's first four assignments of error, in which he contends that the trial court erred
6 in denying his motion for judgment of acquittal on all of four of the charges. In his fifth
7 and sixth assignments of error, defendant contends that the trial court committed plain
8 error in failing to merge the guilty verdicts for possession of a stolen vehicle with the
9 guilty verdicts for unauthorized use of a vehicle. *See State v. Noe*, 242 Or App 530, 256
10 P3d 166 (2011) (guilty verdict for possession of a stolen vehicle merges with guilty
11 verdict for unauthorized use of a vehicle); *see also* ORAP 5.45; *Ailes v. Portland*
12 *Meadows, Inc.*, 312 Or 376, 382, 823 P2d 956 (1991) (court has discretion to review
13 unpreserved error of law apparent on the face of the record). The state concedes that the
14 trial court so erred and that, "although defendant's fifth and sixth assignments of error are
15 unpreserved, this court can review them as plain error." We agree, accept the state's
16 concession, and, for the reasons stated in *State v. Camacho-Alvarez*, 225 Or App 215,
17 216, 200 P3d 613 (2009), conclude that it is appropriate to exercise our discretion to
18 correct the error in this case.

19 Reversed and remanded with instructions to merge the guilty verdicts for
20 possession of a stolen vehicle and unauthorized use of a vehicle into two convictions for
21 unauthorized use of a vehicle and for resentencing; otherwise affirmed.