

**FILED: October 30, 2013**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

KENNETH NICHOLAS ROWLING,  
Defendant-Appellant.

Marion County Circuit Court  
12C43012

A151529

Audrey J. Broyles, Judge.

Argued and submitted on October 02, 2013.

Jason E. Thompson argued the cause for appellant. With him on the briefs were Ferder Casebeer French & Thompson, LLP.

Timothy A. Sylwester, Assistant Attorney General, argued the cause for respondent. With him on the brief were Ellen F. Rosenblum, Attorney General, and Anna M. Joyce, Solicitor General.

Before Ortega, Presiding Judge, and Hadlock, Judge, and Edmonds, Senior Judge.

PER CURIAM

Remanded for entry of a judgment omitting the \$500 unitary assessment on the menacing conviction; otherwise affirmed.

1 PER CURIAM

2 Defendant appeals a judgment convicting him of unlawful use of a weapon,  
3 ORS 166.220, and menacing, ORS 163.190, raising three assignments of error. We reject  
4 without discussion defendant's two assignments of error raised in his supplemental brief  
5 and write only to address the single assignment of error raised in his opening brief. In  
6 that assignment, defendant asserts that the trial court plainly erred in imposing a \$500  
7 unitary assessment on the menacing conviction because the statute that provided for that  
8 assessment was repealed effective January 1, 2012, before defendant committed the  
9 crimes in this case. *See former* ORS 137.290(2)(b) (2009), *repealed by* Or Laws 2011,  
10 ch 597, § 118; Or Laws 2012, ch 89, § 1; *see also* ORAP 5.45; *Ailes v. Portland*  
11 *Meadows, Inc.*, 312 Or 376, 382, 823 P2d 956 (1991) (court has discretion to review  
12 unpreserved error of law apparent on the face of the record). The state agrees that the  
13 trial court committed plain error when it imposed the assessment because "no current  
14 statutory provision that applies to [defendant's] menacing conviction authorizes  
15 imposition of such an assessment." We agree and accept the state's concession.  
16 Furthermore, in light of the interests of the parties and the ends of justice in this case, we  
17 conclude that it is appropriate to exercise our discretion to correct the error in this case.  
18 *See Ailes*, 312 Or at 382 n 6; *see also State v. Quade*, 252 Or App 577, 578, 287 P3d  
19 1278 (2012) (exercising discretion to correct plain error in imposing unitary assessment  
20 based on "the interests of the parties and the ends of justice"). Accordingly, the case  
21 must be remanded for the trial court to enter a judgment omitting the \$500 unitary

1 assessment.

2 Remanded for entry of a judgment omitting the \$500 unitary assessment on

3 the menacing conviction; otherwise affirmed.