

FILED: June 18, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

RAMON DELGADO-JUAREZ,
Defendant-Appellant.

Yamhill County Circuit Court
CR110666

A152167

John L. Collins, Judge.

Submitted on April 29, 2014.

Peter Gartlan, Chief Defender, and Morgen E. Daniels, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Susan G. Howe, Senior Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and DeVore, Judge, and Garrett, Judge.

PER CURIAM

Portion of judgment requiring defendant to pay attorney fees reversed; otherwise affirmed.

1 PER CURIAM

2 Defendant was convicted of multiple sexual offenses and sentenced to 298
3 months' imprisonment. In his first and second assignments of error, he challenges
4 nonunanimous jury verdicts as unconstitutional, and in his third and fourth assignments
5 of error, he contends that statements made by the prosecutor in closing argument
6 impermissibly commented on his credibility. We reject defendant's first through fourth
7 assignments of error without further discussion. We write only to address defendant's
8 fifth assignment of error, which concerns the imposition of attorney fees.

9 In that assignment of error, defendant contends that the trial court
10 committed plain error when it ordered him to pay \$1,200 in attorney fees when the record
11 was silent as to whether he "is or may be able to pay" the costs of his defense. *See* ORS
12 151.505(3) ("The court may not require a person to pay costs under this section unless the
13 person is or may be able to pay the costs."); ORS 161.665(4) ("The court may not
14 sentence a defendant to pay costs under this section unless the defendant is or may be
15 able to pay them."). Defendant failed to preserve that claim of error but urges us to
16 review and correct the error as "an error of law apparent on the record." ORAP 5.45(1);
17 *Ailes v. Portland Meadows, Inc.*, 312 Or 376, 382, 823 P2d 956 (1991) (court has
18 discretion to review unpreserved error of law apparent on the face of the record).

19 We agree with defendant that the trial court plainly erred in imposing
20 attorney fees of \$1,200 on this record. *See State v. Coverstone*, 260 Or App 714, 716,
21 320 P3d 670 (2014) (holding that a trial court commits plain error by imposing court-

1 appointed attorney fees where the record is silent as to the defendant's ability to pay the
2 fees ordered). Further, we conclude that, for reasons similar to those expressed in
3 *Coverstone*, it is appropriate to exercise our discretion to correct the error. First, the error
4 is grave, in that defendant was ordered to pay a substantial sum, \$1,200. Second, this is
5 not a case in which the trial court could have made the necessary finding regarding ability
6 to pay if the issue had been brought to its attention; the record contains no evidence of
7 defendant's financial resources. And, third, defendant was sentenced to a lengthy prison
8 term, 298 months, making it speculative that defendant would have the funds to pay the
9 fees or acquire them in the future. *See State v. Chavez*, 263 Or App 187, 188, ___ P3d
10 ___ (2014) (exercising discretion to correct a similarly grave error under similar
11 circumstances); *State v. Callentano*, 263 Or App 190, 191, ___ P3d ___ (2014) (same);
12 *cf. State v. Baco*, 262 Or App 169, 171, 324 P3d 491 (2014) (declining to exercise
13 discretion to correct a plain error in imposing court-appointed attorney fees where the
14 "error is not grave because \$510 is not a substantial amount given that defendant's
15 probationary sentence does not prevent him from working and that defendant agreed to
16 the state's recommendation of attorney fees in the same amount for another charge
17 sentenced at the same time").

18 Portion of judgment requiring defendant to pay attorney fees reversed;
19 otherwise affirmed.