

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of R. C.,
a Person Alleged to have Mental Illness.

STATE OF OREGON,
Respondent,

v.

R. C.,
Appellant.

Washington County Circuit Court
18CC00358; A166996

Benjamin S. Johnston, Judge pro tempore.

Submitted March 8, 2019.

Joseph R. DeBin and Multnomah Defenders, Inc., filed
the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin
Gutman, Solicitor General, and Jonathan N. Schildt,
Assistant Attorney General, filed the brief for respondent.

Before Armstrong, Presiding Judge, and Tookey, Judge,
and Shorr, Judge.

PER CURIAM

Affirmed.

PER CURIAM

Appellant appeals a judgment committing him to the custody of the Mental Health Division for a period not to exceed 180 days on the ground that he has a mental illness. Appellant assigns error to the trial court's failure to dismiss the commitment proceeding for failure to comply with ORS 426.123. Specifically, appellant contends that the judgment of commitment must be reversed because the court did not include in its detention warrant a written warning that observations made while appellant was hospitalized could be used at the commitment hearing. Appellant's claim is unpreserved, and he requests plain-error review. As explained below, neither ORS 426.123 nor the Due Process Clause of the Fourteenth Amendment plainly require a court to dismiss a commitment proceeding for failure to comply with ORS 426.123. Hence, we affirm the commitment judgment.

Among other things, ORS 426.123(1) directs that, when a person is taken into custody under a detention warrant in a civil commitment proceeding, the person is to be given warnings orally and in writing that observations of the person by staff of the facility in which the person is held may be used as evidence in subsequent court proceedings. *See* ORS 426.070(5)(b)(B)(ii).

It is undisputed that the warnings required by ORS 426.123 were not given to appellant. Appellant contends on appeal that, in light of the failure to give the required warnings, the trial court plainly erred under ORS 426.123 and the Due Process Clause by failing to dismiss the commitment proceeding. However, appellant cannot establish, as he must, that either ORS 426.123 or the Due Process Clause plainly require a court to dismiss a commitment proceeding for failure to comply with ORS 426.123.

The legislature specified in ORS 426.123(3) that “[f]ailure to give a warning under this section does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.” Implicit in the legislative decision not to require a court to exclude evidence obtained under circumstances in which a person has not been given the warnings required by ORS 426.123

is the principle that the commitment hearing can be held notwithstanding a violation of ORS 426.123, that is, that a violation of ORS 426.123 is not grounds to dismiss a commitment proceeding. Appellant likewise has not shown that the Due Process Clause plainly mandates a warning, like that in ORS 426.123, before a trial court can lawfully proceed with a commitment proceeding. Accordingly, we reject appellant's contention that the trial court plainly erred by failing to dismiss the commitment proceeding in this case.

Affirmed.