

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of S. M. P.,
a Person Alleged to have Mental Illness.

STATE OF OREGON,
Respondent,

v.

S. M. P.,
Appellant.

Lane County Circuit Court
18CC05659; A169211

Maurice K. Merten, Judge.

Submitted July 29, 2019.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Robert M. Wilsey, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Egan, Chief Judge, and Powers, Judge.

PER CURIAM

Affirmed.

PER CURIAM

Appellant seeks reversal of a judgment committing him to the Mental Health Division for a period not to exceed 180 days. ORS 426.130. Appellant contends the judgment should be reversed because the court failed to serve a citation on appellant “prior to the hearing,” as required by ORS 426.090.¹ Appellant acknowledges that he did not preserve his assignment of error, but requests that we review and correct the error as plain error. ORAP 5.45(1). We reject appellant’s assignment of error because any error by the court was not “plain.”

Here, the transcript of the proceedings shows that appellant was served with the citation at 10:03 a.m. prior to the commencement of the hearing. However, the court file provides that the hearing was set for 10:30 a.m., and the filed certificate of service provides that appellant was served with the citation on the date of the hearing at 10:37 a.m. Because it is not irrefutable, based on this record, that appellant was not served with the citation until after the hearing commenced, the error alleged by appellant does not qualify as plain error. *See State v. Jury*, 185 Or App 132, 135, 57 P3d 970 (2002), *rev den*, 335 Or 504 (2003) (“For error to be considered apparent on the face of the record for purposes of ORAP 5.45, it must satisfy three criteria: (1) it must be legal error; (2) it must be apparent, such that the legal point is obvious, not reasonably in dispute; and (3) it must appear on the face of the record, such that we need not go outside the record or choose between competing inferences to find it, and the facts that comprise the error are

¹ ORS 426.090 provides:

“The judge shall issue a citation to the person alleged to have a mental illness stating the nature of the information filed concerning the person and the specific reasons the person is believed to be a person with mental illness. The citation shall further contain a notice of the time and place of the commitment hearing, the right to legal counsel, the right to have legal counsel appointed if the person is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed, the right to subpoena witnesses in behalf of the person to the hearing and other information as the court may direct. The citation shall be served upon the person by delivering a duly certified copy of the original thereof to the person in person prior to the hearing. The person shall have an opportunity to consult with legal counsel prior to being brought before the court.”

irrefutable.” (Internal quotation marks omitted.)). Accordingly, we affirm.

Affirmed.