IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of D. M.,
a Person Alleged to have Mental Illness.
STATE OF OREGON,
Respondent,

v.

D. M.,
Appellant.
Umatilla County Circuit Court
21CC02678; A176082

Eva J. Temple, Judge.

Submitted October 1, 2021.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Jona J. Maukonen, Assistant Attorney General, filed the brief for respondent.

Before DeVore, Presiding Judge, and DeHoog, Judge, and Mooney, Judge.

PER CURIAM

Reversed.

PER CURIAM

Appellant appeals a judgment committing him to the Oregon Health Authority for a period not to exceed 180 days and an order prohibiting him from purchasing or possessing firearms, based on a finding of mental illness. He contends that he is entitled to reversal because the record contains no return of service showing that he had been served with the citation before the hearing, as required by ORS 426.080 and ORS 426.090. Although appellant did not preserve that argument, he contends that this constitutes plain error. The state concedes that neither the trial court file nor the transcript of the hearing contains any evidence that appellant was served with the citation, and that appellant is entitled to reversal as this qualifies as plain error. We agree and accept the state's concession. ORS 426.090 requires the court to issue a citation that informs a person alleged to have a mental illness of specific rights, and ORS 426.080 specifies that the person serving the citation "shall, immediately after service thereof, make a return upon the original warrant or citation showing the time, place and manner of such service and file it with the clerk of the court." *See State v. J. R. W.*, 307 Or App 372, 475 P3d 138 (2020) (reversing as plain error in same circumstances); *State v. R. E. J.*, 306 Or App 647, 474 P3d 461 (2020) (same). For the reasons set forth in *J. R. W.* and *R. E. J.*, we exercise our discretion to correct the error.

Reversed.