

FILED: April 24, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

CHARLES EVANS NAYLOR,
Defendant-Appellant.

Marion County Circuit Court
10C40413

A149293

Albin W. Norblad, Judge.

Submitted on March 27, 2013.

Peter Gartlan, Chief Defender, and Jonah Morningstar, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Carson L. Whitehead, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Hadlock, Judge.

PER CURIAM

Attorney fee assessment reversed; otherwise affirmed.

1 PER CURIAM

2 Defendant was convicted of second-degree theft. ORS 164.045. On
3 appeal, he asserts that the trial court erred in denying his motion for judgment of acquittal
4 and in imposing \$87.33 of restitution, a \$67 unitary assessment, a \$35 surcharge, and
5 \$390 in attorney fees. We reject without published discussion all of defendant's
6 contentions except for his argument that the trial court erred in imposing attorney fees.
7 With respect to that assertion, the state concedes that "the trial court erred by imposing
8 \$390 in attorney's fees in the judgment when the record does not support defendant's
9 ability to pay those fees." We agree and accept the state's concession. *See State v.*
10 *Pendergraph*, 251 Or App 630, 284 P3d 573 (2012) (holding that it is error to impose
11 attorney fees where the record does not support the defendant's ability to pay those fees).
12 Attorney fee assessment reversed; otherwise affirmed.