

**FILED: October 29, 2014**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

JOAQUIN TAPIA-MARTINEZ,  
Defendant-Appellant.

Washington County Circuit Court  
C120611CR

A153686

Janelle F. Wipper, Judge.

Submitted on September 29, 2014.

Peter Gartlan, Chief Defender, and Eric Johansen, Senior Deputy Public Defender, Office of Public Defense Services, filed the briefs for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Pamela J. Walsh, Assistant Attorney General, filed the brief for respondent.

Before Armstrong, Presiding Judge, and Nakamoto, Judge, and Egan, Judge.

PER CURIAM

Attorney fee award reversed; otherwise affirmed.

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**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Appellant

- No costs allowed.  
 Costs allowed, payable by  
 Costs allowed, to abide the outcome on remand, payable by
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1                   PER CURIAM

2                   In this criminal appeal, defendant seeks reversal of his conviction for three  
3 counts of first-degree sodomy, raising a number of assignments of error. We reject  
4 without written discussion all of defendant's contentions except for his argument that the  
5 trial court erred in imposing attorney fees. With respect to that assertion, the state  
6 concedes that, "because the record contains no information that defendant could repay  
7 attorney fees, \* \* \* the trial court erred by requiring him to pay them." We agree and  
8 accept the state's concession. *See State v. Pendergraph*, 251 Or App 630, 284 P3d 573  
9 (2012) (holding that it is error to impose attorney fees where the record does not support  
10 the defendant's ability to pay those fees).

11                   Attorney fee award reversed; otherwise affirmed.