

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

JOSEPH FELIX KERBRAT,  
*Defendant-Appellant.*

Clatsop County Circuit Court  
127087; A154559

Cindee S. Matyas, Judge.

Submitted February 25, 2015.

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

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

Before Ortega, Presiding Judge, and DeVore, Judge, and Garrett, Judge.

PER CURIAM

Portion of judgment imposing probation condition requiring blood or buccal sample reversed; otherwise affirmed.

**PER CURIAM**

Defendant appeals a judgment of conviction for one count of misdemeanor driving under the influence of intoxicants. He raises two assignments of error. We write to address only defendant's first assignment of error; as to his second assignment of error, we affirm without published discussion.

In his first assignment of error, defendant challenges a condition of probation requiring that he provide a blood or buccal sample. Under ORS 137.076, that condition of probation may be imposed only upon a conviction of a felony or certain other specific offenses. Because he was not convicted of a felony or one of the offenses specified in ORS 137.076, defendant reasons, the trial court erred in imposing that condition of probation. The state concedes, and we agree, that the trial court erred by ordering a blood or buccal sample as a condition of defendant's probation. Accordingly, we reverse and remand with instructions to delete that probation condition from the judgment of conviction and otherwise affirm.

Portion of judgment imposing probation condition requiring blood or buccal sample reversed; otherwise affirmed.