

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

TRAVIS LEUTY BARGER,
Defendant-Appellant.

Washington County Circuit Court
C132260CR; A156126

Andrew Erwin, Judge.

Submitted August 27, 2015.

Peter Gartlan, Chief Defender, and Stephanie J. Hortsch, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Peenesh H. Shah, Assistant Attorney General, filed the brief for respondent.

Before Lagesen, Presiding Judge, and Garrett, Judge, and Schuman, Senior Judge.

PER CURIAM

Portion of judgment requiring defendant to pay attorney fees reversed; otherwise affirmed.

PER CURIAM

Defendant appeals a judgment of conviction entered after a jury found him guilty of first-degree robbery and third-degree robbery. In his first assignment of error, he contends that the trial court erroneously admitted hearsay evidence over his objection. We reject that assignment without written discussion. We write only to address defendant's second assignment of error, which concerns the imposition of attorney fees.

In that assignment of error, defendant contends that the trial court committed plain error when it ordered him to pay \$2,976 in attorney fees when the record was silent as to whether he “is or may be able to pay” the costs of his defense. See ORS 151.505(3) (“The court may not require a person to pay costs under this section unless the person is or may be able to pay the costs.”); ORS 161.665(4) (“The court may not sentence a defendant to pay costs under this section unless the defendant is or may be able to pay them.”). Defendant failed to preserve that claim of error but urges us to review and correct the error as “an error of law apparent on the record.” ORAP 5.45(1); *Ailes v. Portland Meadows, Inc.*, 312 Or 376, 382, 823 P2d 956 (1991). The state concedes that the trial court committed plain error when it imposed attorney fees without making an ability-to-pay determination.

We accept the state's concession that the trial court plainly erred in imposing attorney fees of \$2,976 on this record. See *State v. Coverstone*, 260 Or App 714, 716, 320 P3d 670 (2014) (holding that a trial court commits plain error by imposing court-appointed attorney fees where the record is silent as to the defendant's ability to pay the fees ordered). Further, we conclude that, for reasons similar to those expressed in *Coverstone*, it is appropriate to exercise our discretion to correct the error. *Id.* at 716-17.

Portion of judgment requiring defendant to pay attorney fees reversed; otherwise affirmed.