

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

JACOB KURTIS DAVIS,  
*Defendant-Appellant.*

Columbia County Circuit Court  
131037; A162604

Ronald D. Thom, Senior Judge.

Submitted November 3, 2017.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Anna Melichar, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Michael A. Casper, Assistant Attorney General, filed the brief for respondent.

Before DeHoog, Presiding Judge, and Egan, Chief Judge, and Aoyagi, Judge.

PER CURIAM

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

**PER CURIAM**

This appeal arises from a judgment revoking defendant's probation, sentencing him to jail time, and imposing \$215 in court-appointed attorney fees. On appeal, defendant asserts that the trial court erred by imposing attorney fees in the absence of evidence that he "is or may be able to pay" the fees. *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."); *see also* 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."). The state concedes that the trial court plainly erred by imposing the attorney fees when the record is silent as to defendant's ability to pay them. We agree, and accept the state's concession. *See State v. Coverstone*, 260 Or App 714, 716, 320 P3d 670 (2014) (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 those fees). Furthermore, for the same reasons expressed in *State v. Hunt*, 271 Or App 347, 353, 350 P3d 521 (2015), we conclude that it is appropriate to exercise our discretion to correct the error. In particular, we conclude that the gravity of the error weighs in favor of correcting it. *See State v. Brockway*, 283 Or App 726, 391 P3d 980, *rev den*, 361 Or 524 (2017) (exercising discretion to correct erroneous imposition of \$200 in court-appointed attorney fees).

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