

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

ANDREW TYLER SLESSLER,
aka Andrew Slessler,
Defendant-Appellant.

Marion County Circuit Court
17CR05905, 17CR09235;
A164607 (Control), A164608

David E. Leith, Judge.

Submitted October 5, 2018.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Joanna L. Jenkins, Assistant Attorney General, filed the brief for respondent.

Before Lagesen, Presiding Judge, and DeVore, Judge, and James, Judge.

PER CURIAM

In Case No. A164607, portion of judgment requiring defendant to pay attorney fees reversed; otherwise affirmed. In Case No. A164608, affirmed.

PER CURIAM

In a single assignment of error, defendant challenges the trial court's imposition of \$221 in court-appointed attorney fees as part of a judgment concerning a probation violation. He argues, as he did below, that he lacked the ability to pay those fees. *See State v. Kanuch*, 231 Or App 20, 24, 217 P3d 1082 (2009) (court cannot order a defendant to pay costs unless the state proves the defendant's ability to pay them). The state concedes that, under this court's case law, the evidence in the record is insufficient to support a finding that defendant is or may be able to pay the attorney fees imposed. *State v. Villalta*, 292 Or App 811, 425 P3d 478 (2018) (rejecting the state's argument that the defendant's good health, willingness to pay, and belief that he ought to do so were sufficient to support the trial court's finding of ability to pay). We agree, accept the state's concession, and reverse the attorney-fee award in Case No. A164607.

In Case No. A164607, portion of judgment requiring defendant to pay attorney fees reversed; otherwise affirmed. In Case No. A164608, affirmed.