

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

MATTHEW NATHAN WALTEBURG,  
*Defendant-Appellant.*

Marion County Circuit Court  
17CR02864; A164759

Daniel J. Wren, Judge pro tempore.

Submitted June 1, 2018.

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

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

Before Armstrong, Presiding Judge, and Tookey, Judge, and Shorr, Judge.

PER CURIAM

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

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**PER CURIAM**

Defendant appeals a judgment of conviction for possession of methamphetamine and driving under the influence of intoxicants. Defendant argues that the trial court committed plain error when it ordered him to pay \$186 in court-appointed attorney fees because the record contains no evidence of defendant's ability to pay them.<sup>1</sup> The state concedes that, under *State v. Below*, 264 Or App 384, 387-88, 332 P3d 329 (2014), and *State v. Pendergraph*, 251 Or App 630, 634, 284 P3d 573 (2012), the trial court plainly erred in imposing \$186 in attorney fees. We agree that the trial court committed plain error, accept the state's concession, and conclude that it is appropriate to exercise our discretion to correct the error in this case because of the gravity of the error and the lack of any evidence of financial resources.

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

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<sup>1</sup> The trial court imposed \$567 in court-appointed attorney fees, but reduced the amount of "actual owed" attorney fees in the judgment to \$186.