

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

MICHELLE RAE SMITH,  
*Defendant-Appellant.*

Lincoln County Circuit Court  
141766; A158794

On remand from the Oregon Supreme Court, *State v. Sholedice/Smith*, 364 Or 146, 431 P3d 386 (2018), *adh'd to as modified on recons*, 364 Or 575, 437 P3d 1142 (2019).

Sheryl Bachart, Judge.

Submitted on remand May 21, 2019.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and David B. Thompson, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Portions of the judgment requiring defendant to pay the \$60 “Mandatory State Amt” reversed; otherwise affirmed.

**PER CURIAM**

This case comes to us on remand from the Supreme Court, after it concluded that we erred in reversing defendant's convictions. *See State v. Sholedice/Smith*, 364 Or 146, 170, 431 P3d 386 (2018), *adh'd to as modified on recons*, 364 Or 575, 437 P3d 1142 (2019) (concluding that the trial court correctly denied defendant's motion to suppress and that we had erred in concluding otherwise). In its initial opinion, the Supreme Court reversed our decision and affirmed the trial court's judgment. *Id.* On reconsideration, however, the court modified its disposition. It explained that defendant had also assigned error to the trial court's imposition of "the so-called 'mandatory state amount' of \$60 on each conviction," and that this court had not had occasion to address that assignment. *State v. Sholedice/Smith*, 364 Or 575, 577, 437 P3d 1142 (2019). The Supreme Court therefore modified its disposition to state that "the decision of the Court of Appeals is reversed, and the case is remanded to the Court of Appeals for consideration of defendant's remaining assignment of error." *Id.* at 578.

That remaining assignment of error is one that the state has conceded, and we accept that concession. *See State v. Easton*, 278 Or App 167, 169, 373 P3d 1225 (2016) (discussing the repeal of the statute authorizing assessment of a "mandatory state amount" and reversing the imposition of a \$60 "Mandatory State Amt" for each conviction under similar circumstances).<sup>1</sup> Accordingly, we reverse those portions of the judgment and otherwise affirm, as we did in *Easton*.

Portions of the judgment requiring defendant to pay the \$60 "Mandatory State Amt" reversed; otherwise affirmed.

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<sup>1</sup> In *Easton*, the defendant also assigned error "to the trial court's requirement that he pay the money award on each count immediately," and we rejected those assignments of error without discussion. 278 Or App at 168. The defendant then petitioned for review of that aspect of our decision, and the Supreme Court allowed the petition. Thereafter, the parties filed a joint motion to vacate the trial court judgment so that the trial court could reconsider all issues. The Supreme Court allowed the motion, vacated the judgment, and remanded to the trial court for reconsideration. *State v. Easton*, 360 Or 402, 381 P3d 842 (2016). Nothing about that subsequent history casts any doubt on our reasoning in *Easton* regarding the mandatory state amount; rather, it was premised on the assumption that we were correct in that regard.