

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

EUGENIA Y. STARODUBOV,
Defendant-Appellant.

Clackamas County Circuit Court
16CR16659; A165615

Thomas J. Rastetter, Judge.

Submitted March 26, 2019.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Greg Rios, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

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

PER CURIAM

Appealing a judgment of conviction for unlawful possession of heroin, ORS 475.854, defendant assigns error to the trial court's (1) failure to supply a concurrence instruction to the jury and (2) imposition of \$887 in court-appointed attorney fees in the absence of evidence that defendant had the statutorily required ability, or potential ability, to pay those fees. Neither assignment of error is preserved. We reject the first assignment of error on the ground that the trial court's error, if any, is not plain. As to the second assignment of error, the state concedes—correctly—that on this record, the trial court's imposition of attorney fees constituted plain error under our case law. For reasons similar to those stated in *State v. Harris*, 293 Or App 110, 111, 426 P3d 252 (2018), we exercise our discretion to correct that error.

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