

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

CORY RUSSELL COGHILL,
aka Cory R. Coghill,
Defendant-Appellant.

Josephine County Circuit Court
16CR68303; A166207

Eveleen Henry, Senior Judge.

Submitted May 29, 2019.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and John Evans, 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 Ortega, Presiding Judge, and Powers, Judge, and Sercombe, Senior Judge.

PER CURIAM

Portion of judgment requiring defendant to pay a \$1,255 DUII fine vacated; remanded for resentencing; otherwise affirmed.

PER CURIAM

Following a conditional guilty plea, defendant was convicted of misdemeanor driving under the influence of intoxicants (DUII), ORS 813.010(4). We reject defendant's first assignment of error without discussion. In his second assignment, defendant argues that the trial court erred when, after orally imposing a fine at defendant's sentencing in the amount of \$1,000, it entered a judgment imposing a fine in the amount of \$1,255. Defendant acknowledges that the \$255 difference was likely the imposition of a DUII conviction fee under ORS 813.020(1)(a) and ORS 813.030, but argues that the trial court could not impose that fine outside his presence. In his third and fourth assignments, defendant contends that the trial court erred when it imposed a \$15 license suspension assessment and \$100 bench probation fee in the judgment because the court did not announce at sentencing that it was imposing those monetary obligations. Defendant further contends that, because defendant was not aware of the trial court's error with regard to those fines until after the judgment was entered, preservation is not required.

The state concedes that the trial court erred in imposing the \$255 conviction fee outside of defendant's presence and that preservation is not required. We agree and accept the state's concession. *State v. Tison*, 292 Or App 369, 372, 374, 424 P3d 823, *rev den*, 363 Or 744 (2018) (concluding that the trial court erred when it imposed monetary obligations in the judgment that exceeded the amount it ordered orally in court and that preservation was not required).

The remaining issue is the proper remedy. Defendant ask us to reverse the portions of the judgment imposing the additional \$255 fine, the license suspension assessment, and the bench probation fee. The state argues that the proper remedy is to remand for resentencing, and, because the case should be remanded for resentencing, that we need not reach his remaining assignments. We agree with the state.

The trial court is required to impose a \$255 DUII conviction fee, "except that the court may waive all or part of

the fee in cases involving indigent defendants.” ORS 813.030; ORS 813.020(1)(a). Therefore, the proper remedy is to remand to the trial court. *See Tison*, 292 Or App 373-75 (concluding that, because there was no record of the trial court waiving the \$255 fee, reversing the judgment with a directive to the trial court to impose only the amount orally ordered in court would “frustrate the legislative goal reflected in ORS 813.020(1) and ORS 813.030”). Because defendant will have an opportunity at resentencing to address the \$15 license suspension assessment and \$100 bench probation fee, we need not reach those assignments. *See State v. Crow*, 292 Or App 196, 418 P3d 779 (2018) (concluding there was no need to reach the remaining assignment related to the imposition of fees where the parties agreed that resentencing was required).

Portion of judgment requiring defendant to pay a \$1,255 DUUI fine vacated; remanded for resentencing; otherwise affirmed.