

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

TREVOR NATHAN TOHL,
aka Trevor Tohl,
Defendant-Appellant.

Tillamook County Circuit Court
16CR73242; A167184

Mari Garric Trevino, Judge.

Submitted September 30, 2019.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Jennifer S. Lloyd, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Portion of judgment of conviction requiring defendant to pay a \$2,255 fine vacated; remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant appeals the judgment convicting him of driving under the influence of intoxicants, ORS 813.010. He first contends that the trial court erred by (1) denying his request that the court instruct the jury that it must unanimously agree on its verdict and (2) accepting the jury's nonunanimous verdict. We reject those assignments of error without further discussion. Defendant also argues that the court erred by imposing a \$2,255 fine in the judgment, which exceeded by \$255 the amount the trial court announced it would impose at the sentencing hearing. The state concedes that the judgment erroneously imposed a fine greater than the one announced at sentencing. We agree and accept the state's concession. *See State v. Tison*, 292 Or App 369, 374, 424 P3d 823, *rev den*, 363 Or 744 (2018) (agreeing with the parties that the "trial court erred when it included in the judgments of conviction a monetary penalty that exceeded by \$255 the fines announced at the sentencing hearing"). Consequently, we remand for resentencing. *See id.* at 375 (a remand for resentencing is appropriate when we cannot discern the trial court's intentions to waive the \$255 fee required by ORS 813.020(1) and ORS 813.030).

Portion of judgment of conviction requiring defendant to pay a \$2,255 fine vacated; remanded for resentencing; otherwise affirmed.