

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

SIVISAY JOHN RAJSAVONG,
aka Sivisong John Rajsavong,
Defendant-Appellant.

Multnomah County Circuit Court
17CR25794; A172895

Steffan Alexander, Judge.

Submitted October 27, 2021.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Shannon T. Reel, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Shorr, Judge, and Powers, Judge.

PER CURIAM

Portion of judgment requiring defendant to pay \$100 bench probation fee vacated; remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant appeals a judgment convicting him of second-degree trespass, ORS 164.245, arguing that the trial court erred in denying his motion for judgment of acquittal, plainly erred in failing to exclude certain evidence, and erred in imposing a \$100 bench probation fee that was not announced in open court at sentencing. We reject defendant's argument concerning the sufficiency of the evidence and his argument concerning admissibility of evidence without discussion. With respect to the probation fee, the state concedes the error. We agree that that was error and accept the state's concession.

In *State v. Baccaro*, 300 Or App 131, 133, 452 P3d 1022 (2019), we explained that imposition of a bench probation fee in a written judgment that had not been announced in the defendant's presence at sentencing was error. We rejected the state's argument that the error was harmless because the fee could not be waived, noting that the court nonetheless retained the authority to suspend execution of that portion of his sentence. *Id.* at 137. *Baccaro* is controlling here.

Portion of judgment requiring defendant to pay \$100 bench probation fee vacated; remanded for resentencing; otherwise affirmed.