

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

DAVID ALLEN SANKEY,  
*Defendant-Appellant.*

Multnomah County Circuit Court  
16CR09272; A162569

Bronson D. James, Judge.

Submitted November 3, 2017.

Ernest G. Lannet, Chief Defender, and Anna Melichar, Deputy Public Defender, Criminal Appellate Section, 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 Garrett, Judge, and Powers, Judge.

PER CURIAM

Portion of judgment requiring defendant to pay \$100 bench probation fee and \$255 “DUII conviction fee” reversed; otherwise affirmed.

## PER CURIAM

Defendant appeals a judgment of conviction for second-degree criminal mischief, asserting in his first assignment of error that the trial court erred by not granting his motion for judgment of acquittal. He also challenges, in his second and third assignments of error, the trial court's imposition of two fines, a \$100 bench probation fee and a \$255 "DUII conviction fee," on the basis that the court imposed those financial penalties outside his presence. We reject defendant's first assignment of error without written discussion. As for his second and third assignments, the state acknowledges that the court declared at sentencing that it would waive all fees, but in the written judgment it imposed the bench probation fee and the "DUII conviction fee." The state concedes that it was error to impose those financial penalties outside the presence of defendant. We agree, accept the state's concession, and reverse the portion of the judgment requiring defendant to pay the \$100 bench probation fee and the \$255 "DUII conviction fee."<sup>1</sup> See *State v. White*, 269 Or App 255, 257, 344 P3d 510, *rev den*, 357 Or 300 (2015) (accepting state concession that trial court's failure to impose court-appointed attorney fees orally at the sentencing hearing was error).

Portion of judgment requiring defendant to pay \$100 bench probation fee and \$255 "DUII conviction fee" reversed; otherwise affirmed.

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<sup>1</sup> We also note that defendant was not convicted of driving under the influence of intoxicants; thus the court lacked the authority to impose the "DUII conviction fee." *State v. Williams*, 280 Or App 631, 632, 380 P3d 1225, *rev den*, 360 Or 604 (2016).