

Modified and Affirmed and Opinion Filed July 26, 2023



**In The
Court of Appeals
Fifth District of Texas at Dallas**
**No. 05-22-00452-CR
No. 05-22-00453-CR**
DARIUS GRANT WILSON, Appellant
V.
THE STATE OF TEXAS, Appellee

**On Appeal from the 416th Judicial District Court
Collin County, Texas
Trial Court Cause Nos. 416-81772-2021 & 416-81774-2022**

MEMORANDUM OPINION

Before Justices Molberg, Carlyle, and Smith
Opinion by Justice Molberg

Darius Grant Wilson appeals his convictions for two aggravated robberies. The trial court accepted appellant's open pleas of guilty and after considering evidence presented at the hearing on punishment, sentenced him to twenty-five years' confinement in each case. In two issues, appellant challenges certain costs and fees assessed against him. We affirm the judgments as modified.

Background

Appellant was indicted for two aggravated robberies, one of which was alleged to have occurred in February 2021 and the other in March 2021. Appellant

waived his right to a jury trial and pleaded guilty to the trial court without an agreement as to punishment. Following a two-day punishment hearing, the trial court found appellant guilty of both charges and sentenced him to twenty-five years' confinement in each case. Appellant was billed \$365.00 for costs of court, fees, and reimbursement in cause number 05-22-00452-CR (trial court cause number 416-81772-2021) and \$355.00 for the same in cause number 05-22-00453-CR (trial court cause number 416-81774-2022). This appeal followed.

Applicable Law

The imposition of certain court costs is mandatory upon conviction unless the only punishment is a fine. *See* TEX. CODE CRIM. PROC. art. 42.16. However, a cost cannot be imposed for a service not performed or for a service for which a cost is not expressly provided by law. *Id.* art. 103.002.

“In a single criminal action in which a defendant is convicted of two or more offenses or of multiple counts of the same offense, the court may assess each court cost or fee only once against the defendant.” TEX. CODE CRIM. PROC. art. 102.073(a). For purposes of this rule, a person convicted of two or more offenses in the same trial or plea proceeding is convicted of those offenses in a “single criminal action.” *Shuler v. State*, 650 S.W.3d 683, 690 (Tex. App.—Dallas 2022, no pet.). Generally, the costs should be assessed in the case with the highest category offense but, when the convictions are for the same category of offense and the costs are the same, the costs should be assessed in the case with the lowest trial court cause number. *Id.*

However, not all costs associated with the multiple offenses are necessarily duplicative. For example, the code of criminal procedure provides reimbursement fees for arrests “shall be assessed on conviction, regardless of whether the defendant was also arrested at the same time for another offense, and shall be assessed for each arrest made of a defendant arising out the offense for which the defendant has been convicted,” *See* TEX. CODE CRIM. PROC. art. 102.011(e). Thus, the plain language of the statute requires assessment of the arrest fee for each conviction as well as assessment of an arrest fee for each arrest. *See Guerra v. State*, 547 S.W. 3d 445, 447 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (determining arrest fee for each conviction is required).

Similarly, the code of criminal procedure requires a defendant convicted of a felony or a misdemeanor to pay a reimbursement fee of “\$5 for summoning a witness” when those services are performed by a peace officer. TEX. CODE CRIM. PROC. art. 102.011(a)(1). And the statute requires the five dollar fee for each witness summoned each time the witness is summoned. *Ramirez v. State*, 410 S.W.3d 359, 365 (Tex. App.—Houston [1st Dist.] 2013, pet. ref’d). In addition to the five dollar fee or fees for summoning a witness, the code of criminal procedure requires a defendant to “pay 29 cents for mileage required of an officer to perform a service . . . and to return from that service.” *Id.* at 102.011(b).

We may modify the trial court’s judgment to make the record speak the truth when we have the necessary information to do so. TEX. R. APP. P. 43.2(b); *Bigley v.*

State, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993) (refusing to limit the authority of the courts of appeals to reform judgments to only those situations involving mistakes of a clerical nature); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref’d). This includes modifying a judgment to eliminate duplicative or improper costs. *See, e.g., Pacas v. State*, 612 S.W.3d 588, 597 (Tex. App.—Houston [1st Dist.] 2020, pet. ref’d) (modifying trial court judgments to delete duplicative costs); *Robles v. State*, No. 01-16-00199-CR, 2018 WL 1056482, at *6 (Tex. App—Houston [1st Dist.] Feb. 27, 2018, pet. ref’d) (mem. op., not designated for publication) (modifying judgment to delete witness fees).

Discussion

Appellant and the State both agree the judgments in these cases should be modified, but they disagree about some of the proposed modifications. According to appellant, because both aggravated robbery convictions followed a single proceeding in which he entered guilty pleas and went “open” to the trial court on punishment, fees and costs should only have been assessed in cause number 05-22-00452-CR. Appellant requests we modify the judgment in 05-22-00453-CR to reflect zero costs and fees. Appellant also contends we should modify the judgment in cause number 05-22-00452-CR because the costs include two, five dollar fees for subpoena service and neither subpoena was served.

The State agrees with appellant that some of the fees and costs assessed in 05-22-00453-CR are duplicative, but maintains that the fifty dollar fee for “Warrants”

and the five dollar “Ticket or Arrest without Warrant” fee are not duplicative. The State proposes we modify the bill of costs in 05-22-00453-CR by removing the \$355 as the total assessed, and replacing it with \$55. With respect to the costs in 05-22-00452-CR, the State contends appellant’s argument that the costs of summoning a witness cannot be imposed if a subpoena is unserved is incorrect. However, the State agrees the subpoena service fees should be deleted because, according to the State, the record does not contain sufficient evidence the officer traveled to serve the subpoenas.

In his first issue, appellant contends that because he pleaded guilty to two offenses in a single proceeding but was billed \$365.00 for costs of court, fees, and reimbursement in the first case, cause number 05-22-00452-CR, and \$355.00 for the same in the second case, cause number 05-22-00453-CR, the costs are duplicative. After reviewing the records in these cases, we agree the costs in 05-22-00453-CR are duplicative of those in 05-22-00452-CR with the exception of the arrest fee—the code of criminal procedure requires assessment of arrest fees for each conviction and arrest. Thus, we sustain, in part, appellant’s first issue and we modify the judgment in 05-22-00453-CR to show costs in the amount of fifty-five dollars.

With respect to appellant’s second issue complaining the reimbursement fees for summoning two witnesses are improper, we agree with appellant that the fees should be deleted because the record does not show either witness was summoned. *See* TEX. CODE CRIM. PROC. art. 103.002 (cost cannot be imposed for a service not

performed); *Robles*, 2018 WL 1056482, at *6 (agreeing with State that assessment of fee for witness subpoenas that were never served is not permissible). The subpoena returns serving as the basis for the fees show that one of the subpoenas was unserved because it was “canceled.” The other shows that the witness was not served because of a “bad” address. Because the subpoenas were not served, we conclude the witnesses were not “summoned.” It follows that if the witnesses were not summoned, the service being charged for was not performed. In reaching this conclusion, we necessarily reject the State’s argument that if the record contained proof showing the officer traveled to serve the witness, the State was entitled to be reimbursed five dollars. Fees for travel are distinct from fees for summoning the witness. We disagree with the State’s argument to the contrary.

As modified, we affirm the judgments in these cases.

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Do Not Publish
TEX. R. APP. P. 47.2(b)

/Ken Molberg/
KEN MOLBERG
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

DARIUS GRANT WILSON,
Appellant

No. 05-22-00452-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 416th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 416-81772-
2021.

Opinion delivered by Justice
Molberg. Justices Carlyle and Smith
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

We **REMOVE** "\$365" from the space beneath "Court Costs" and **INSERT** "\$355" in its place.

Additionally, the trial court's bill of costs is **MODIFIED** as follows:

We **REMOVE** the \$10.00 Subpoena Service Cons # 4 fee.

We **REMOVE** the amount of "\$365.00" from the entries for "Total Assessed" and "Balance Due" and **INSERT** "\$355.00" for each entry.

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 26th day of July, 2023.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

DARIUS GRANT WILSON,
Appellant

No. 05-22-00453-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 416th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 416-81774-
2021.

Opinion delivered by Justice
Molberg. Justices Carlyle and Smith
participating.

Based on the Court’s opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

We **REMOVE** “\$355” from the space beneath “Court Costs” and **INSERT** “\$55” in its place.

Additionally, the trial court’s bill of costs is **MODIFIED** as follows:

We **REMOVE** the following charges: (i) Clerk Fee \$40.00, (ii) Court Technology Fund \$4.00, (iii) Courthouse Security \$10.00, (iv) Jury Trial \$1.00, (v) Records Management Fee-District Clerk \$25.00, (vi) Specialty Court County Fee \$25.00, (vii) Approving Bond by Sheriff \$10.00, (viii) Serving of a Writ Sheriff \$35.00, and (ix) Consolidated Court Costs-Felony \$185.00.

We **REMOVE** the amount of “\$355.00” from the entries for “Total Assessed” and “Balance Due” and **INSERT** “55.00” for each entry.

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 26th day of July, 2023.