



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00298-CR

DOUG BYRNS

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM COUNTY CRIMINAL COURT NO. 5 OF DENTON COUNTY
TRIAL COURT NO. F-2013-1398-B

MEMORANDUM OPINION¹

Doug Byrns appeals from his conviction and four-year sentence for felony driving while intoxicated. See Tex. Penal Code Ann. §§ 49.04(a), 49.09(b) (West Supp. 2016). He also challenges a \$15 charge assessed against him as part of the court costs. We affirm.

¹See Tex. R. App. P. 47.4.

A true bill of indictment against appellant was originally returned in the 362nd District Court; that court transferred the case to the 158th District Court. The next month, the 158th District Court signed an Order of Assignment assigning the cause number to Denton County Criminal Court No. 5, which has concurrent felony jurisdiction with the district courts “over matters involving intoxication arising by a true bill of indictment by a grand jury charging one or more offenses under Chapter 49” of the penal code. See Tex. Gov’t Code Ann. § 25.0634 (West 2004). Appellant pled guilty to the indictment and elected to have the trial judge assess his punishment. As part of his plea, he waived the right to appeal issues related to guilt-innocence only, but he reserved the right to appeal matters affecting sentencing.² After a hearing at which appellant was represented by counsel, the judge of County Criminal Court No. 5 sentenced appellant to four years’ confinement.

In his first point, appellant contends that the judgment is void because the 158th District Court did not properly assign the case to County Criminal Court No. 5. Appellant’s complaint appears to be that no transfer order was ever issued. But not only does the record contain a transfer order signed by the 158th District Court judge and the judge of County Criminal Court No. 5—in which the 158th District Court transferred, and County Criminal Court No. 5 accepted, jurisdiction of the trial court cause number—the record does not show that

²As relief, appellant seeks a new trial or, alternatively, reformation of the judgment to delete the complained-of court cost.

appellant complained about the lack of a proper transfer order in the trial court. See *Lemasurier v. State*, 91 S.W.3d 897, 899–900 (Tex. App.—Fort Worth 2002, pet. ref’d) (holding that lack of transfer order is procedural, not jurisdictional, complaint that must be raised in the trial court to be preserved); see also *Daniels v. State*, 352 S.W.2d 267, 268 (Tex. Crim. App. 1961) (holding that lack of transfer order between two district courts cannot be complained of on appeal absent the filing of a timely plea to the jurisdiction in the trial court). Accordingly, we overrule appellant’s first point.

In his second point, appellant complains that the bill of costs, which was issued by the district clerk, improperly includes \$15 for “Judicial Fund Court Costs.” According to appellant, that charge may only be imposed for a conviction in a statutory county court, and in this case County Criminal Court No. 5 was “only sitting for the 158th . . . District Court.” Appellant cites no authority for the proposition that the \$15 cost is not authorized in this case.

County Criminal Court No. 5 is a statutory county court. Tex. Gov’t Code Ann. § 25.0631(a)(7) (West 2004). Government code section 51.702(b) provides that “a person shall pay \$15 as a court cost on conviction of *any criminal offense in a statutory county court.*” *Id.* § 51.702(b) (West 2013) (emphasis added). The Order of Assignment assigns the cause number to County Criminal Court No. 5 and concludes by stating, “Upon the failure of the receiving court to accept this cause within 30 days from the date of this order, jurisdiction will revert to the original Court.” Nothing in the Order of Assignment indicates that the district

court intended for the judge of the county criminal court to merely sit as the judge of the district court. Cf. Tex. Gov't Code Ann. § 74.094(a) (West 2013) (“A district or statutory county court judge may hear and determine a matter pending in any district or statutory county court in the county regardless of whether the matter is preliminary or final or whether there is a judgment in the matter. The judge may sign a judgment or order in any of the courts *regardless of whether the case is transferred*. The judgment, order, or action is valid and binding as if the case were pending in the court of the judge who acts in the matter.” (emphasis added)). Thus, we conclude and hold that the inclusion of the \$15 judicial fund fee in accordance with government code section 51.702(b) is not improper. We overrule appellant’s second point.

Having overruled appellant’s points, we affirm the trial court’s judgment.

/s/ Terrie Livingston

TERRIE LIVINGSTON
CHIEF JUSTICE

PANEL: LIVINGSTON, C.J.; SUDDERTH and PITTMAN, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: August 17, 2017