

NO. 12-12-00316-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***JEROME JONES,
APPELLANT***

§

APPEAL FROM THE 114TH

V.

§

JUDICIAL DISTRICT COURT

***THE STATE OF TEXAS,
APPELLEE***

§

SMITH COUNTY, TEXAS

MEMORANDUM OPINION

Jerome Jones appeals his conviction for the felony offense of burglary of a habitation. In one issue, Appellant challenges the sufficiency of the evidence to support the trial court’s assessment of court costs. We modify and affirm as modified.

BACKGROUND

In April 2012, after consuming large amounts of alcohol and cocaine, Appellant approached an open garage door, where he observed a chain saw and weed eater. Appellant intended to steal the items, sell them, and obtain a hotel room with the proceeds. Before he could fully execute the plan, the homeowner, a deputy employed by the Smith County Sheriff’s Department, pulled into the driveway and observed Appellant attempting to steal the tools. The homeowner held Appellant at gunpoint until the police arrived. Appellant was indicted for the offense of burglary of a habitation. The indictment contained a punishment enhancement based on a prior felony conviction. Appellant pleaded “guilty” to the charge and the enhancement. The trial court, after accepting the plea, assessed punishment at thirty years of imprisonment.

In its formal pronouncement, the trial court stated, “[C]ourt costs are ordered paid. . . .” In

the judgment of conviction, the trial court ordered the payment of \$574.00 in court costs. At that time, the certified bill of costs was not in the record. After Appellant filed his notice of appeal, the State filed a motion to supplement the appellate record, which was granted by this court. The supplemental record contains a certified copy of the bill of costs.

COURT COSTS

In his sole issue, Appellant contends that the trial court erred by “imposing court costs not supported by the . . . bill of costs and by ordering that the same be withdrawn from [his] inmate trust account.” He argues that because we cannot determine from the record the basis of the court costs imposed, we “should modify the trial court’s judgment to delete any unsupported costs.” We construe Appellant’s argument as a challenge to the sufficiency of the evidence.

Standard of Review

A challenge to the sufficiency of the evidence supporting court costs is reviewable on direct appeal in a criminal case. *Armstrong v. State*, 340 S.W.3d 759, 767 (Tex. Crim. App. 2011). We measure sufficiency by reviewing the record in the light most favorable to the award. *Mayer v. State*, 309 S.W.3d 552, 557 (Tex. Crim. App. 2010); *Johnson v. State*, No. 12-12-00289-CR, 2013 WL 3054994, at *2 (Tex. App.—Tyler June 19, 2013, no pet. h.) (not yet released for publication).

Applicable Law

A judgment shall “adjudge the costs against the defendant, and order collection thereof. . . .” *See* TEX. CODE CRIM. PROC. ANN. art. 42.16 (West 2006). If a criminal action is appealed, “an officer of the court shall certify and sign a bill of costs stating the costs that have accrued and send the bill of costs to the court to which the action or proceeding is transferred or appealed.” *Id.* art. 103.006 (West 2006). The code of criminal procedure does not require that a certified bill of costs be filed at the time the trial court signs the judgment of conviction or before a criminal case is appealed. *See id.* arts. 103.006, 103.001 (West 2006). However, “[a] cost is not payable by the person charged with the cost until a written bill is produced or is ready to be produced, containing the items of cost, signed by the officer who charged the cost or the officer who is entitled to receive payment for the cost.” *Id.* art. 103.001. Requiring a convicted defendant to pay court costs does not alter the range of punishment and is authorized by statute. *See id.*; *Weir v. State*, 278 S.W.3d 364, 367 (Tex. Crim. App. 2009).

The rules of appellate procedure permit supplementation of the clerk's record "[i]f a relevant item has been omitted. . . ." See TEX. R. APP. P. 34.5(c)(1). Furthermore, when a trial court's assessment of costs is challenged on appeal and no bill of costs is in the record, it is appropriate to supplement the record pursuant to Rule 34.5(c) because a bill of costs is required by Article 103.006. See TEX. R. APP. P. 34.5(c); TEX. CODE CRIM. PROC. ANN. art. 103.006. Supplementation is permissible because a bill of costs is a governmental record that is "merely a documentation of what occurred during . . . the trial." See *Johnson*, 2013 WL 3054994, at *1.

In certain circumstances, a trial court has the authority to assess attorney's fees against a criminal defendant who received court-appointed counsel. See TEX. CODE CRIM. PROC. ANN. art. 26.05(g) (West Supp. 2012). But once a criminal defendant has been determined to be indigent, he "is presumed to remain indigent for the remainder of the proceedings unless a material change in his financial circumstances occurs." *Id.* art. 26.04(p) (West Supp. 2012). Thus, the trial court must determine that the defendant has financial resources which enable him to offset in part or in whole the costs of the legal services provided, and that determination must be supported by some factual basis in the record before attorney's fees are imposed. See *Johnson*, 2013 WL 3054994, at *3. If the record does not show that the defendant's financial circumstances materially changed after the previous determination that he was indigent, the evidence will be insufficient to support the imposition of attorney's fees. See *id.* (citing *Mayer*, 309 S.W.3d at 553). Unlike other court costs, supplementation of the record to provide evidence of Appellant's ability to pay attorney's fees is not appropriate. See *Johnson*, 2013 WL 3054994, at *2 (citing *Mayer*, 309 S.W.3d at 557).

Discussion

Here, the judgment of conviction reflects that the trial court assessed \$574.00 as court costs. The judgment of conviction also includes a document identified as "Attachment A Order to Withdraw Funds." The attachment states that Appellant has incurred "[c]ourt costs, fees and/or fines and/or restitution" in the amount of \$574.00.

Appellant argues that his due process rights were violated because the district clerk did not prepare a written bill of costs before the costs were "taxed against" him. Because the record was properly supplemented to include a certified bill of costs, we need not discuss the alleged due process violation. See *id.*, at *2 n.3; see also TEX. R. APP. P. 47.1.

Appellant next contends that the portions of the costs assessed are unsupported by the

evidence. The bill of costs itemizes the costs and fees assessed against Appellant. The attorney's fees total \$300.00, and the remaining fees total \$274.00. The court costs set out in the trial court's judgment are the same as those shown in the clerk's certified bill of costs. We have verified that each fee listed in the bill of costs is authorized by statute.¹ Appellant is required to pay all of these costs, except the attorney's fees, regardless of his indigence. *See* TEX. CODE CRIM. PROC. ANN. arts. 26.05(g), 42.16; *see also Johnson v. State*, No. 12-12-00263-CR, 2013 WL 2286077, at *2 (Tex. App.—Tyler May 22, 2013, no pet. h.) (mem. op., not designated for publication) (“[T]he legislature has not preconditioned the collection of court costs or fines on an inmate's ability to pay.”). Therefore, the evidence is sufficient to support the trial court's assessment of \$274.00 in court costs against Appellant.

There is no evidence in the record, however, that Appellant's financial circumstances materially changed after the trial court determined that he was indigent. *See* TEX. CODE CRIM. PROC. ANN. art. 26.04(p). The record shows that the trial court made two separate findings of Appellant's indigence—by appointing counsel to represent Appellant before his guilty plea and by appointing appellate counsel after it found him guilty and assessed his punishment. The trial court made no finding that Appellant has financial resources which enable him to offset in whole or in part the costs of the legal services he was provided. Consequently, the evidence is insufficient to support the imposition of attorney's fees as court costs. *See id.* art. 26.04(p), 26.05(g); *see also Johnson*, 2013 WL 3054994, at *4.

Appellant's sole issue is sustained in part.

DISPOSITION

Having sustained Appellant's sole issue in part, we modify the trial court's judgment to reflect that the amount of court costs is \$274.00. *See* TEX. R. APP. P. 43.2(b). We also modify Attachment A to delete the assessment of \$300.00 in attorney's fees and to state that the total amount of “court

¹ The bill of costs lists attorney's fees, jury service fee, clerk's fee, records management, records management and preservation fee—DC, warrant fee, bond fee, arrest fee (commit and release), courthouse security, consolidated court fees, judiciary fund county, judiciary fund state, and indigent defense court cost. All of these fees are authorized by statute. *See* TEX. CODE CRIM. PROC. ANN. art. 26.05(g); TEX. CODE CRIM. PROC. ANN. art. 102.0045(a) (West Supp. 2012); TEX. CODE CRIM. PROC. ANN. art. 102.005(a), (f) (West 2006); TEX. CODE CRIM. PROC. ANN. art. 102.011(a)(2), (5), (6) (West Supp. 2012); TEX. CODE CRIM. PROC. ANN. art. 102.017(a) (West Supp. 2012); TEX. LOCAL GOV'T CODE ANN. § 133.102(a)(1) (West Supp. 2012); TEX. LOCAL GOV'T CODE ANN. § 133.105(a), (b) (West 2008); TEX. LOCAL GOV'T CODE ANN. § 133.107(a) (West Supp. 2012).

costs, fees and/or fines and/or restitution” is \$274.00. *See, e.g., Reyes v. State*, 324 S.W.3d 865, 868 (Tex. App.—Amarillo 2010, no pet.). We ***affirm*** the judgment of the trial court ***as modified***. *See* TEX. R APP. P. 43.2(b).

SAM GRIFFITH
Justice

Opinion delivered June 25, 2013.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

JUNE 25, 2013

NO. 12-12-00316-CR

JEROME JONES,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 114th Judicial District Court
of Smith County, Texas. (Tr.Ct.No. 114-0750-12)

THIS CAUSE came on to be heard on the appellate record and the briefs filed herein; and the same being inspected, it is the opinion of the Court that the trial court's judgment below should be **modified and, as modified, affirmed**.

It is therefore ORDERED, ADJUDGED and DECREED that the trial court's judgment below be **modified** to reflect that the amount of court costs is \$274.00; we also modify Attachment A to delete the assessment of \$300.00 in attorney's fees and to state that the total amount of "court costs, fees and/or fines and/or restitution" is \$274.00; that **as modified**, the trial court's judgment is **affirmed**; and that this decision be certified to the trial court below for observance.

Sam Griffith, Justice.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.