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RENDERED: MAY 14, 2015
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2013-SC-000272-MR

GEORGE WILLIAM BEASON, JR. APPELLANT

V.

ON APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KEN HOWARD, JUDGE
NO. 11-CR-00474

COMMONWEALTH OF KENTUCKY APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

The trial court convicted George William Beason, Jr., in a non-jury trial of three counts of incest, one count of third-degree rape, three counts of third-degree sodomy, four counts of first-degree sexual abuse, one count of distribution of obscene material to a minor, and being a second-degree Persistent Felony Offender. The trial court sentenced Beason to seventy years' imprisonment for these crimes. Appealing the resulting judgment as a matter of right,[1] Beason's allegations of error fail to merit reversal of his conviction so we affirm the judgment.

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[1] Ky. Const. § 110(2)(b).

I. FACTUAL AND PROCEDURAL BACKGROUND.

Beason moved in with Andrea[2] and her children from a previous marriage and soon engaged in various sexually abusive acts involving Andrea's oldest daughter, Emily, who was thirteen at the time. Beason also repeatedly subjected Emily to pornographic videos.

A friend whose daughter was friends with Emily informed Andrea of Beason's sexual misconduct. When Andrea confronted both Beason and Emily, they denied the allegations. Andrea distrusted these denials and turned to her church for help with ridding the "demon spirit" she believed was to blame—all three met with the church's pastor.

Emily then confessed to Andrea the truth about the sexual misconduct. Later, Beason himself admitted to Andrea that Emily's allegations were true. But Andrea chose not to go to authorities. She insisted that Beason apologize to Emily and attempted to keep Beason and Emily separated as much as possible. After that, Andrea routinely pressed Emily to inform her of any new incidents of sexual misconduct. Eventually, Emily did so.

This new allegation centered on Beason's conduct while Andrea was away from the family on an overnight trip for her work. To keep Beason and Emily separated while Andrea was absent from the home, Andrea had her mother stay with the family. But, late one night, Beason stole into Emily's bedroom, awakened her, and told her to come with him. Beason led Emily into the bedroom he shared with Andrea where he raped and sodomized her.

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[2] Andrea is an alias created by this Court for the victim's mother in an attempt to protect her identity. Likewise, Emily is an alias for the victim.

During the encounter, Emily became upset and angry. To appease Emily, Beason offered to buy Emily a cell phone even though it was approximately 1:00 in the morning. Surveillance cameras at a local Wal-Mart captured Beason entering and leaving the store around this time.

Andrea demanded that Beason leave her home and reported the abuse to child-protective services and the police. After interviewing Andrea and Emily, the police searched the residence and seized a large section of the carpet from Emily's room and a number of pornographic movies. The carpet sample tested positive for Beason's semen, and the pornographic movies were the same ones Emily reported to police Beason had her watch.

After hearing the evidence at trial, the trial court found Beason guilty on twelve of the fourteen charges levied by the Commonwealth, dismissing one charge and rendering a decision of not guilty on the other. The trial court sentenced Beason to the statutory maximum, seventy years' imprisonment, and issued a judgment accordingly.

II. ANALYSIS.

Beason presents several issues for our review that he contends merit reversal of his convictions. We disagree with reversal and deal with each issue in turn.

A. Commonwealth's Mention of Possible Higher Charges did not Render Beason's Trial Unfair.

Beason challenges the Commonwealth's repeated assertions at trial that Beason could have been charged with more crimes or faced more severe

charges. According to Beason, these references by the Commonwealth were pervasive enough to create a "theme" of prosecution, *i.e.*, Beason did many bad things to Emily that went uncharged so Beason should be punished as severely as possible for the charges actually brought. We agree with Beason to the extent that the Commonwealth's statements regarding Beason's uncharged conduct were inappropriate, but we cannot agree that these statements rendered Beason's non-jury trial fundamentally unfair.

From what we can decipher, Beason highlights two primary examples of the Commonwealth's inappropriate conduct—when direct questioning of the lead detective and when making its closing argument. First, during its case-in-chief, the Commonwealth presented the testimony of the lead detective. On redirect, the Commonwealth elicited extensive testimony from the detective about the process undertaken in compiling exculpatory evidence pointing to Beason. During this questioning, the Commonwealth asked the detective if he had found evidence indicating more charges could have been brought against Beason. The detective answered in the affirmative, and the Commonwealth requested a specific number of additional charges. At this point, Beason objected. The trial court sustained the objection, noting that the purpose of trial was not to determine proper charges.[3] Considering the trial court's

[3] We reject the Commonwealth's repeated attempt to dismiss Beason's arguments on the basis that Beason did not request an admonition. We are aware, of course, that our precedent maintains "that a failure to request an admonition after an objection ha[s] been sustained means that no error occurred." *Allen v. Commonwealth*, 286 S.W.3d 221, 225-26 (Ky. 2009) (internal quotation marks omitted). But all the cases cited to this Court by the Commonwealth involve jury

sustaining of Beason's objection and, at the very least, indicating full capability of separating uncharged crimes from charged crimes, we are unsure what relief Beason now seeks on appeal. Any error present in the Commonwealth's questioning of the detective was appropriately handled by the trial court.

Second, the Commonwealth repeatedly claimed in closing argument that the conduct covered by Beason's charges was not isolated. Instead, the Commonwealth argued that Beason subjected Emily to repeated sexual abuse for over a year. While arguing against Beason's motion for dismissal of the indictment, the Commonwealth expressed regret and confusion that more charges had not been brought against Beason. And the Commonwealth condemned Beason's decision to insist on a trial on all charges as subjecting Emily to the strain of such a proceeding. We want our disapproval of the Commonwealth's inappropriate arguments to be unmistakable.

It should go without saying that an attorney should not—as the Commonwealth's Attorney did in this case—disparage a defendant by alleging in argument before the factfinder that the defendant revictimizes his victim by taking the case to trial. This is especially so when, as here, the Commonwealth offers no plea bargain, effectively leaving the defendant with the choice of a blind plea to the court or a trial. The Commonwealth should likewise refrain from lamenting to the factfinder that additional charges were not sought. If the Commonwealth feels more charges were appropriate, it should have so charged

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trials. And Beason was tried without a jury. So these cases are completely inapplicable. Indeed, in a bench trial, whom would a trial court admonish?

the defendant; otherwise, the Commonwealth should focus at trial only on the charges it has brought. After all, the Commonwealth decides what charges it is able to prove.

To be sure, the Commonwealth's commentary during the trial of this case is inappropriate. But given the trial court's findings, we remain confident that no prejudice or unfairness infected Beason's trial because of the Commonwealth's comments. During the Commonwealth's closing argument, Beason's counsel registered no objection for most of the statements now raised on appeal as inappropriate and violative of due process. However, defense counsel did object at the end of some statements relating to Beason's revictimization of Emily by forcing the case to go to trial. The trial court sustained the objection and stated, "I will not consider that." We find no error in how the trial court handled the situation.

As to any remaining statements to which Beason did not object, Beason argues the trial court allowed the Commonwealth improperly to introduce the type of prior-bad-acts evidence Kentucky Rules of Evidence (KRE) 404(b) prohibits. KRE 404(b) is designed to exclude "[e]vidence of other crimes, wrongs, or acts" admitted in an attempt "to prove the character of a person in order to show action in conformity therewith." We do allow this evidence to be admitted when offered for some other purpose, such as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident" or if the evidence is "so inextricably intertwined with other

evidence essential to the case that the separation of the two . . . could not be accomplished without serious adverse effect on the offering party."[4]

To the extent the Commonwealth's statements can be considered evidence, perhaps it does violate KRE 404(b). But it is at least arguable that the Commonwealth referred to Beason's systematic abuse of Emily for some other purpose such as opportunity or plan. Likewise, it is arguable the uncharged instances of abuse perhaps provided an explicative background for why Emily was reluctant to come forward or why she was sometimes confused in her statements to police and, as a result, were inextricably intertwined with the other evidence presented during the Commonwealth's case-in-chief. Regardless, no palpable error resulted.[5] There was no manifest injustice in Beason's trial. The trial court sustained both objections Beason made to the Commonwealth's allegedly inappropriate statements and clearly indicated the statements would provide no basis for his decision.[6] We are confident that the

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[4] KRE 404(b)(1)-(2).

[5] Kentucky Rules of Criminal Procedure (RCr) 10.26. "Under RCr 10.26, an unpreserved error may generally be noticed on appeal *if* the error is 'palpable' and *if* it 'affects the substantial rights of a party.'" *Martin v. Commonwealth*, 409 S.W.3d 340, 344 (Ky. 2013). For the former, an error is *palpable* if it is "easily perceptible, plain, obvious and readily noticeable." *Id.* (quoting *Doneghy v. Commonwealth*, 410 S.W.3d 95, 106 (Ky. 2013)). As to the latter, a party's substantial rights are affected when "it is more likely than ordinary error to have affected the judgment." *Id.* (quoting *Ernst v. Commonwealth*, 160 S.W.3d 744, 762 (Ky. 2005)). We only provide relief for such an error "upon a determination that manifest injustice resulted from the error." *Id.* (quoting RCr 10.26). The analysis essentially "boils down to . . . whether the reviewing court believes there is a substantial possibility that the result in the case would have been different without the error." *Brewer v. Commonwealth*, 206 S.W.3d 343, 349 (Ky. 2006) (internal quotation marks omitted).

[6] Additionally, it is noteworthy that the trial court appeared unaffected by the Commonwealth's references to Beason revictimizing Emily by electing to go to trial. At the beginning of the penalty phase, the trial court emphasized that every American

result in Beason's trial would have been the same even without this allegedly improper KRE 404(b) evidence.

Finally, Beason essentially alleges the Commonwealth committed prosecutorial misconduct. Due to a lack of any timely objection, Beason is again forced to request palpable-error review. And, again, we disagree. We have long noted that a prosecutor is allowed a considerable amount of latitude during closing argument.[7] On appeal, determining whether prosecutorial misconduct occurred "must center on the overall fairness of the entire trial."[8] The Commonwealth's statements constituted an unacceptable argument. But in light of the trial court's comments upon sustaining Beason's objections and his reasoning espoused for finding Beason guilty, we cannot say that Beason's trial was tainted by error to the extent that the trial proceeding was fundamentally unfair or manifestly unjust.[9]

Contrary to Beason's contention, the Commonwealth's mention of uncharged crimes did not somehow allow the Commonwealth to ignore its burden of proving its case beyond a reasonable doubt. The Commonwealth proved its case, and the trial court's findings clearly indicated no reliance on

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citizen has the right to trial and exercising that right should not and will not be held against him.

[7] *Noakes v. Commonwealth*, 354 S.W.3d 116, 122 (Ky. 2011) (quoting *Padgett v. Commonwealth*, 312 S.W.3d 336, 350 (Ky. 2010)).

[8] *Id.* at 121.

[9] Indicative of the absence of prejudice in Beason's trial, the trial court, despite all the allegedly erroneous statements by the Commonwealth, dismissed one count and found Beason not guilty of another count—hardly the conduct of an emotionally inflamed factfinder.

the Commonwealth's extraneous statements. Beason was not subjected to a fundamentally unfair trial because of the Commonwealth's statements.

B. The Commonwealth Inappropriately Commented on Beason's Silence, but the Error did not Affect the Trial's Fundamental Fairness.

Beason urges this Court to reverse his conviction because the Commonwealth, during both its case-in-chief and closing argument, repeatedly commented on Beason's exercise of his right to silence. Some instances of this allegedly inappropriate conduct by the Commonwealth were objected to by Beason while others went unchallenged. So we are faced with both preserved and unpreserved claims of error.

During the Commonwealth's direct examination of the lead detective, the Commonwealth elicited testimony regarding the specifics of the investigation. At one point, the Commonwealth asked the detective if anyone, either Beason or Andrea, had provided any reason for why Beason's semen would be in Emily's bedroom. The detective responded that no reason had been provided. At this point, the defense objected to the answer—not the question—because the conclusion was outside the expertise of the witness. The trial court overruled the objection but indicated that the testimony would only be used as "investigative background . . . explain[ing] [the detective's] actions in investigating the case."

The grounds for Beason's objection and the grounds on which he now challenges the trial court's decision are not remotely connected. This alone is

reason to reject Beason's argument with regard to this particular occurrence.[10] Additionally, we are unable to discern any abuse of discretion by the manner in which the trial court treated the testimony. After hearing reasoning from each party, the trial court stated on the record the evidence would be used for a very narrow purpose, not to prejudice Beason for ostensibly exercising his right to silence.[11]

Beason also challenges the Commonwealth's redirect examination of the detective, during which the Commonwealth elicited testimony that the detective attempted to talk with Beason but was unable to do so. In reality, given the totality of the detective's testimony, including questioning by Beason, we are unable to discern how Beason's right to silence was implicated in any manner. The detective testified that he contacted Beason and asked if he would be willing to come to the police station and talk with the detective. Beason informed the detective he was out of town at that time and would not be able to make it to the police department for roughly another hour. Beason did not show up at the police station on that date, but this fact is misleading without further explanation. The detective contacted Beason again after the hour had passed, and Beason informed the detective it would be perhaps another forty-five minutes before he would be able to make it to the police station for the interview. At this point, according to the detective, it was rather late in the day

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[10] *See Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976).

[11] It is worth mentioning that much of the lead detective's testimony, in response to questioning from both Beason and the Commonwealth, involved the thoroughness of the investigation performed.

so he told Beason to meet him at the police station the following morning, which Beason did. Beason's own counsel even questioned the detective about this series of events on cross-examination. Then the Commonwealth asked the detective on redirect if he was able to talk with Beason, to which the detective replied, "No." At no point during this questioning did Beason object.

Rather than indicating a disregard for a defendant's right to silence, this testimony indicates nothing more than the difficulties often associated with scheduling. And the Commonwealth expressed its purpose for such questioning was simply to indicate the thoroughness of the investigation performed. We are left confused as to the exact nature of Beason's argument on this point. Surely a defendant does not exercise his right to silence by inaccurately estimating his time of arrival at the police station. If anything, Beason's conduct and communications with the detective indicate a willingness to talk with police. In any event, even if we assume the detective's testimony implicated Beason's constitutional right to silence, we are confident any error was harmless beyond a reasonable doubt.[12]

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[12] A constitutional violation, including one involving an individual's right to silence, may be subject to harmless-error review. *See Buchanan v. Commonwealth*, 691 S.W.2d 210, 213 (Ky. 1985). "[B]efore a federal constitutional error can be held harmless, the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt." *Barth v. Commonwealth*, 80 S.W.3d 390, 395 (Ky. 2001) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)) (alteration omitted). This is a higher standard, of course, than our normal harmless-error review. *St. Clair v. Commonwealth*, 451 S.W.3d 597, 632 (Ky. 2014) ("The bar for finding harmless constitutional error, however, is much higher than for other errors.").

More egregious, however, was the Commonwealth's closing argument mentioning Beason's refusal to testify. We provide the Commonwealth's comments about Beason's silence here in full:

> I may have misunderstood [Beason's counsel], but I took it for him to say that [Beason] said this didn't happen. I've never heard that. We've heard from one person, two people can tell this story and one person was brave enough to get up and tell us about it. A fourteen-, now sixteen-, year-old girl got up there and told us about it.

The Commonwealth's argument here is a blatant and inappropriate comment on the defendant's right to remain silent. If the Commonwealth wished to comment on the inadequacy of Beason's trial strategy and its failed attempt to prove he did not commit the charged offenses, it had many options at its disposal.[13] Beason did not object to the Commonwealth's comments so, as a result, the issue is unpreserved and palpable-error review is requested.

It is settled law that "[t]he Commonwealth is prohibited from introducing evidence or commenting in any manner on a defendant's silence once that defendant has been informed of his rights and taken into custody."[14] And we have routinely emphasized our disapproval of prosecutors using "post-arrest

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[13] The Commonwealth argues the improper statements were in direct response to an argument by Beason's counsel. Specifically, during closing argument, Beason's counsel argued that by going to trial, Beason was essentially saying Emily's allegations were not true. We have dealt with improper arguments by a prosecutor in response to opposing counsel's argument and found palpable error lacking. *See Commonwealth v. Mitchell*, 165 S.W.3d 129, 132 (Ky. 2005). That said, the Commonwealth's attempt to characterize its clearly improper statements as responsive to arguments by Beason's counsel is very tenuous. If the Commonwealth desired to respond to the argument that Beason was claiming Emily's allegations were untrue, we reiterate that other options were available.

[14] *Hunt v. Commonwealth*, 304 S.W.3d 15, 35-36 (Ky. 2009).

silence as a prosecutorial tool."[15] In Beason's case, however, we are not convinced manifest injustice resulted from the Commonwealth's inappropriate argument.

Notably, the trial court appeared unfazed by the Commonwealth's conduct. In point of fact, in handing down the verdict, the trial court provided extensive reasoning, devoid entirely of indicia that Beason's choice not to testify played any role in the trial court's decision. Emily's testimony and the degree to which the admitted evidence corroborated her testimony were the pillars upon which the trial court's decision rested. And the trial instructions clearly provided: "A Defendant is not compelled to testify and the fact that the Defendant did not testify in this case cannot be used as an inference of guilt and should not prejudice him in any way." It is fair to presume that a trial court is capable and willing to follow its own instruction.[16]

Moreover, the trial court had a rather extensive colloquy with Beason regarding his decision not to testify. The colloquy indicated clearly that Beason voluntarily elected to proceed without testifying after consultation with counsel. More importantly, though, the colloquy displayed that the trial court was keenly aware of the magnitude of Beason's decision. Reviewing the trial as a whole, we are unable to conclude Beason suffered manifest injustice. A bench

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[15] *Id.* at 36 (quoting *Wallen v. Commonwealth*, 657 S.W.2d 232, 233 (Ky. 1983)).

[16] We note that a trial court instructing itself on the law in a bench trial is a rather odd concept. Here, our mention of the trial court's instructions is not a comment on the practice's propriety. We mention the instructions simply as further indication that the trial court was impervious to the Commonwealth's improper mention of Beason's decision to abstain from testifying.

trial differs in critical ways from a jury trial; and without further evidence that the trial court somehow underappreciated Beason's right to silence, we cannot find palpable error given the instant facts as presented.

C. The Trial Court did not Improperly Exclude Evidence Under KRE 412.

Beason urges this Court to reverse his conviction because the trial court improperly excluded an alleged prior false allegation, which—as Beason argues—is admissible under KRE 412. As our rape-shield rule, KRE 412 prohibits "[e]vidence offered to prove that any alleged victim engaged in other sexual behavior[,]" as well as "[e]vidence offered to prove any alleged victim's sexual predisposition." Explicit exceptions are outlined in the rule, but a prior false allegation is not one of them. In fact, "[o]n its face, KRE 412(a) does not apply to evidence that a witness has made prior *false* allegations of sexual abuse."[17] Instead, we have recognized that a prior false allegation of sexual abuse may "potentially reflect[] on the credibility of the allegation being tried, and it potentially provides evidence of a motive to make false accusations in the case being tried."[18] Despite KRE 412 not being directly applicable, we have "considered its purpose when gauging admissibility of allegedly false prior accusations of sexual conduct."[19] In an attempt to balance a defendant's right to present a defense with the victim's interest in excluding collateral character

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[17] *Perry v. Commonwealth*, 390 S.W.3d 122, 129 (Ky. 2012).

[18] *Id.*

[19] *Id.*

evidence, we allow evidence of prior false accusations only when they are proven to be demonstrably false.[20]

The challenged evidence in this case involves a text-message conversation between Emily and one of her friends. Her friend acknowledged being in a sexual relationship with an older man; and Emily responded that she was in such a relationship, as well. Emily did not want Andrea to find out elsewhere, so she told her about the conversation. But Emily quickly assured Andrea that she did not do any of those things; rather, she only said that to her friend because she did not want her friend to feel so alone. The trial court called this conversation an "accommodation to a friend" rather than an accusation and did not allow the evidence to be admissible at trial.

We review a trial court's evidentiary decisions for an abuse of discretion, which will only be found if a trial court's decision is "arbitrary, unreasonable, unfair, or unsupported by sound legal principles."[21] We are unable to find the trial court abused its discretion in this case. Initially, it is at least debatable whether Emily's text-message conversation with her friend constitutes an *accusation, i.e.*, "a claim that someone has done something wrong or illegal."[22] Emily did not state that anyone had done something illegal;[23] rather, she

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[20] *See Dennis v. Commonwealth*, 306 S.W.3d 466, 470-76 (Ky. 2010).

[21] *Miller v. Eldridge*, 146 S.W.3d 909, 914 (Ky. 2004).

[22] www.merriam-webster.com/dictionary/accusation. Our case law has used *allegation* interchangeably with *accusation*. *Allegation* is defined as "a statement saying that someone has done something wrong or illegal[.]" www.merriam-webster.com/dictionary/allegation. The synonymous nature of these words is patent.

[23] At the hearing on the admissibility of the text-message conversation, Beason argued that by discussing a sexual relationship, Emily was per se accusing someone

comforted a friend and then immediately acknowledged the falsity of the statement. Considering that Emily acknowledged truthfulness was never the purpose of the statement, the probative value for Beason's defense seems incredibly low, even for impeachment. To be sure, Beason could have technically impeached Emily by admitting this so-called allegation because it would have perhaps indicated Emily had some proclivity for uttering false statements. But Emily's forthrightness with her reasoning for the false statement, at the very least, mitigates any attribution of deceit. The trial court simply did not abuse its discretion, and Beason was not afforded a fundamentally unfair trial.[24]

D. The Imposition of Court Costs was not Error.

Beason argues the trial court improperly imposed court costs totaling $189 despite his inability to pay. The fees, according to the trial court's order, included: "costs," "bond fees," "court facilities fee," "arrest warrant served," and "arrest without warrant." At trial, Beason was represented by an attorney associated with the Department of Public Advocacy. This issue was not challenged at sentencing when the costs were actually imposed. So the cost issue is unpreserved. Beason argues the issue *is* preserved because it is a

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of doing something illegal because at fourteen years of age, she was unable to consent to *any* sexual activity. We acknowledge the appeal of this argument but reject it in the end for this particular case.

[24] It is worth noting that arguing inadmissibility in a bench trial is somewhat of a confusing issue. The judge operates as both judge and jury, of course. In doing so, when faced with evidentiary rulings, the judge must necessarily review the very evidence that is argued inadmissible. We presume that a trial court follows the judge's own evidentiary rulings when conducting a bench trial, but we would be remiss not to point out the paradoxical nature of this issue.

sentencing error, which is of jurisdictional import and may be raised for the first time on appeal.

Recently, we disposed of Beason's argument in *Spicer v. Commonwealth.*[25] Spicer, like Beason, argued court costs were erroneous and raised the issue for the first time on appeal. The problem was that the record did not "reflect an assessment of [Spicer's] financial status, other than that he was represented by a public defender throughout the trial proceedings, and he was permitted to proceed on appeal *in forma pauperis.*"[26] Of course, this Court operates under the "precept that an appellate court is not bound to affirm an illegal sentence just because the issue of the illegality was not presented to the trial court."[27] That principle was reiterated and affirmed in *Spicer.* Attempts to characterize the unchallenged imposition of court costs as a sentencing error are unavailing. In *Spicer,* we ventured to articulate clearly why court costs are not sentencing errors when unchallenged at their imposition.

> The assessment of court costs in a judgment fixing sentencing is illegal *only* if it orders a person adjudged to be "poor" to pay costs. Thus, while an appellate court may reverse court costs on appeal to rectify an illegal sentence, we will not go so far as to remand a facially[ ]valid sentence to determine if there was in fact error. If a trial judge was not asked at sentencing to determine the defendant's poverty status and did not otherwise presume the defendant to be an indigent or poor person before imposing court costs, then there is no error to correct on appeal. This is because there is no affront to justice when we affirm the assessment of court costs upon a defendant whose status was not determined. It is only when the defendant's poverty status has been established,

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[25] 442 S.W.3d 26 (Ky. 2014).

[26] *Id.* at 34.

[27] *Id.* at 35 (quoting *Jones v. Commonwealth,* 382 S.W.3d 22, 27 (Ky. 2011)).

> and court costs assessed contrary to that status, that we have a genuine "sentencing error" to correct on appeal.[28]

Such is the case here. No hearing was held to determine Beason's status as either a "needy" person or a "poor" person. The only indicator of financial capability was the trial court's strikethrough of attorneys' fees and any fines associated with the crimes "due to [Beason's] indigency." This is simply not sufficient to make Beason's instant challenge one of sentencing to be raised now for the first time. By *Spicer*'s clear terms, "there is no error to correct on appeal."[29] Accordingly, we affirm the trial court's imposition of $189 in court costs.

III. CONCLUSION.

For the foregoing reasons, we affirm Beason's conviction and associated sentence.

All sitting. All concur.

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[28] *Id.*

[29] *Id.*

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