



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1314-15

TERRELL LADEL DAVIS, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE SECOND COURT OF APPEALS
TARRANT COUNTY**

Per curiam. NEWELL, J., filed a concurring opinion in which RICHARDSON, J., joined. YEARY, J., filed a dissenting opinion.

OPINION

Appellant was convicted of burglary of a habitation and sentenced to ten years' imprisonment. On appeal, Appellant claimed that the portions of the consolidated court costs were unconstitutional. The court of appeals held that this claim was not preserved for review because Appellant did not object to the imposition of the fee before the trial court. The record reflects that the bill of costs was not prepared until days after judgment was entered.

Appellant did not have the opportunity to object to this fee when it was imposed. In the context of court-cost challenges, an appellant may not be faulted for failing to object when he or she was not given the opportunity to do so. *London v. State*, 490 S.W.3d 503, 507 (Tex. Crim. App. 2016). Appellant was entitled to challenge this mandatory court cost for the first time on appeal.

This Court recently determined that the abused children's counseling and comprehensive rehabilitation court costs are unconstitutional as a violation of the Separation of Powers Clause of the Texas Constitution. *Salinas v. State*, 523 S.W.3d 103 (Tex. Crim. App. 2017). Pursuant to *Salinas*, the \$133 consolidated court costs should be reduced pro rata by the percentage allocated to these impermissible accounts. The combined percentage attributable to these accounts under the statute is 9.8306 percent. That percentage of the \$133 fee assessed in appellant's case is \$13.07. Subtracting this amount from the \$133 yields a fee of \$119.93. We reverse the judgment of the court of appeals with respect to the issue of court costs, and we modify the trial court's judgment to change the \$133 consolidated fee to \$119.93.

Delivered: October 4, 2017
Do not publish