

AFFIRMED AS MODIFIED and Opinion Filed September 26, 2013.



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

No. 05-12-00375-CR

**RIGOBERTO BENITO
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 401st Judicial District Court
Collin County, Texas
Trial Court Cause No. 401-81659-09**

MEMORANDUM OPINION

**Before Justices Fillmore, Myers, and Maloney¹
Opinion by Justice Maloney**

The jury convicted Rigoberto Benito of continuous sexual abuse and indecency with a child and sentenced him to fifty-five years' confinement for continuous sexual abuse and sentenced him to five years confinement for indecency with a child. The trial court ordered the sentences to be served concurrently. In a single point of error, appellant complains the trial court erred in assessing court appointed attorney's fees as court costs. The State agrees the record contains no evidence to support the fees assessed because appellant was indigent.

Once the trial court finds a defendant indigent, we presume he remains indigent for the remainder of the proceedings unless a material change occurs in his financial resources. *See*

¹ The Honorable Frances J. Maloney, Justice, Court of Appeals, Fifth District of Texas at Dallas, Retired, sitting by assignment.

TEX. CODE CRIM. PROC. ANN. art. 26.04(p) (West Supp. 2012). To assess attorney's fees, the trial court must determine the defendant has the financial resources to cover those costs. *See Youkers v. State*, 400 S.W.3d 200, 212–13 (Tex. App.—Dallas, pet. ref'd); *see also* TEX. CODE CRIM. PROC. ANN. art. 26.05(g) (West Supp. 2012); *Mayer v. State*, 309 S.W.3d 552, 556 (Tex. Crim. App. 2010).

Neither the State nor appellant cites us to any evidence in the record that appellant's financial circumstances have materially changed since the trial court determined that he was indigent. We agree that the evidence does not support an assessment of attorney's fees as court costs. Consequently, we sustain appellant's issue and modify the trial's judgment by deleting the order taxing the cost of attorney's fees against appellant as court costs.

We affirm the trial court's judgment as modified.

/Frances Maloney/
FRANCES MALONEY
JUSTICE, ASSIGNED

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

JUDGMENT

RIGOBERTO BENITO, Appellant

No. 05-12-00375-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 401st Judicial District
Court, Collin County, Texas

Trial Court Cause No. 401-81659-09.

Opinion delivered by Justice Maloney.

Justices Fillmore and Myers participating.

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

We modify the trial court's judgment to delete the order taxing the cost of attorney's fees against appellant as court costs.

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

Judgment entered this 26th day of September, 2013.

/Frances Maloney/

FRANCES MALONEY

JUSTICE, ASSIGNED