Reversed and Remanded in Part; Affirmed in Part and Opinion filed November 30, 2023.

In The

Fourteenth Court of Appeals

NO. 14-22-00684-CR

KELVIN DARNELL MCLEOD, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 1622330

OPINION

Appellant Kelvin Darnell McLeod, Jr. challenges his conviction for online solicitation of a minor. In six issues appellant asserts (1) the trial court lacked jurisdiction; (2) the statute authorizing a visiting judge is unconstitutional as applied to him; (3) the evidence is insufficient to support his conviction; (4) his right against self-incrimination was violated; (5) the judgment inaccurately reflected the victim's age; and (6) the trial court erred in assessing costs. Concluding the trial court had

jurisdiction, the evidence was sufficient to support appellant's conviction, and appellant failed to preserve error on his violation-of-self-incrimination claim, we affirm the judgment of conviction and assessment of punishment. Further concluding that the judgment does not accurately reflect the age of the victim and the court costs were improperly assessed, we reverse the portions of the judgment assessing court costs and stating the age of the victim and remand for proceedings consistent with this opinion.

BACKGROUND

The Harris County Precinct 1 Constable's Office and the Internet Crimes Against Children (ICAC) unit hosted an operation designed to apprehend individuals using the internet to prey on children. Vanessa Brady was an investigator in the ICAC unit. Brady worked as an undercover officer posing online as a minor in the messaging app Kik. Brady's undercover persona was a 15-year-old girl named Abby Lopez.

Appellant initiated a conversation with Brady, who appellant knew by the profile name Abby Lopez, on Kik. Shortly into the conversation, appellant told Brady he was 26, and Brady responded that she was 15 years old. When the conversation continued that evening, appellant and Brady discussed appellant's job as a security guard and appellant said he could use handcuffs on her so he could "have [his] way with [her]." Brady asked what that meant, and appellant replied, "I meant [I] would keep having sex with you all night long."

A few hours later, appellant asked if Brady was home alone and when she responded that she was, appellant suggested maybe he "should come over one day." Brady asked what appellant wanted to do if he came over, and he replied, "Make out which would possibly lead to something else." He soon clarified that "something else" was "taking [her] virginity." Appellant and Brady then discussed when he

could come over and how he would get there.

Over the next several days appellant and Brady chatted more about him coming over and having sex with her. However, appellant called off the initial meeting, stating "[I] never been with a 15 yr old girl. I kinda don't want to feel like I'm taking advantage of you." At that time, Brady responded, "Well I'm not going to bother you anymore" and considered the investigation concluded.

A few days later, however, appellant re-initiated the conversation on the messaging app. Appellant and Brady chatted for a few weeks, often with graphic detail of appellant's sexual intent toward Brady, including nude photos sent by appellant. Approximately two months passed with no interaction, then appellant contacted Brady again.

Another two months later, appellant told Brady he was interested in meeting and asked for her address. As part of the operation, a "takedown team" was located at an apartment complex in Harris County. Video surveillance was set up outside the apartment complex. When appellant arrived at the address, he was arrested.

A jury convicted appellant of online solicitation of a minor, and the trial court assessed appellant's punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for seven years. This appeal followed.

ANALYSIS

Appellant challenges his conviction in six issues in which he asserts (1) the trial court lacked jurisdiction; (2) assignment of a visiting judge was unconstitutional; (3) the evidence was insufficient to support his conviction; (4) his Fifth Amendment right against self-incrimination was violated; (5) the judgment of conviction contains an error in listing the victim's age; and (6) the trial court erred in assessing court costs.

I. Appellant waived his complaint that article 21.02 of the Code of Criminal Procedure was violated.

In his first issue, appellant asserts the judgment of conviction is void because the 178th District Court never acquired jurisdiction over his case. According to appellant, article 21.02(2) of the Code of Criminal Procedure requires a grand jury to present its indictment to the same district court that empaneled the grand jury. *See* Tex. Code Crim. Proc. art. 21.02(2). Appellant asserts the grand jury failed to comply with article 21.02(2) because, instead of presenting the indictment to the 337th District Court—the court that empaneled the grand jury—the grand jury presented the indictment to the 178th District Court. According to appellant, the grand jury's failure to comply with article 21.02(2) rendered the indictment against him a nullity. Thus, he argues it could not have conferred jurisdiction upon any court.

The State asserts that appellant's issue has been rejected multiple times by this court and the First Court of Appeals. *See Johnson v. State*, 562 S.W.3d 168, 172–74 (Tex. App.—Houston [14th Dist.] 2018, pet. ref'd); *Allen v. State*, 570 S.W.3d 795, 799–802 (Tex. App.—Houston [1st Dist.] 2018), *aff'd*, 614 S.W.3d 736 (Tex. Crim. App. 2019). Relying on authority from both Houston courts of appeals, the State asserts the grand jury satisfied the presentment requirement in article 21.02(2) because it presented the indictment to the Harris County District Clerk, the court clerk for all Harris County district courts.

In appellant's reply brief, he asserts that (1) presentment of an indictment to a district clerk does not satisfy the requirement in article 21.02(2) that the indictment be presented to the district court that empaneled the grand jury; (2) there is no evidence the indictment was presented to the empaneling court as required by article 21.02(2); (3) the presentment of an indictment to one district court does not vest jurisdiction in all district courts in the same county; and (4) *Johnson* and *Allen* do

not control because they do not address the requirement in article 21.02(2) that an indictment must be "presented in the district court of the county where the grand jury is in session" and both opinions are inconsistent with the requirements in article 21.02(2).

While a defendant may challenge the trial court's jurisdiction for the first time on appeal, *State v. Dunbar*, 297 S.W.3d 777, 780 (Tex. Crim. App. 2009), this court has held that "[a]t best, appellant's arguments present a non-jurisdictional, procedural issue related to appellant's indictment." *Johnson*, 562 S.W.3d at 174 (addressing a similar, if not identical, argument).

Appellant asserts that *Johnson* does not control because it does not address the mandatory requirement in article 21.02(2) that an indictment be "presented in the district court of the county where the grand jury is in session." Although we have not addressed whether a violation of article 21.02 constitutes a jurisdictional defect, the Court of Criminal Appeals held that the failure to comply with article 21.02 does not deprive a court of jurisdiction. *See Jenkins v. State*, 592 S.W.3d 894, 902 (Tex. Crim. App. 2018) ("We conclude, therefore, that, although defective under article 21.02, the indictment nevertheless (1) charges a person (2) with committing an offense, and thus vested the trial court with both personal and subject-matter jurisdiction."). The court further held that an indictment's failure to comply with article 21.02 amounts to a defect in form that must be raised before the first day of trial or else the issue is waived. *See id*. at 902 ("If a defendant does not object to a defect, error, or irregularity of form or substance in an indictment before the date on which the trial on the merits commences, he waives and forfeits the right to object to the defect, error, or irregularity and he may not raise the objection on appeal or in any other post-conviction proceeding."). Appellant did not object to the alleged failure of the grand jury to comply with article 21.02(2) at trial. We are bound by

high court authority in this instance and conclude that appellant failed to preserve error on this procedural issue. We overrule appellant's first issue.[1]

II. Section 74.056(a) of the Government Code is not unconstitutional as applied to appellant.

This case was tried in the 178th District Court of Harris County beginning September 15, 2022. At the time of trial, Judge Kelli Johnson was the elected judge of the 178th District Court. She did not preside over the trial, however. Judge Terry Flenniken, who had been assigned to serve as a visiting judge, presided over the trial instead. In appellant's second issue, he asserts that Government Code section 74.056(a), which authorizes a presiding judge to assign visiting judges to try cases and dispose of accumulated business, is unconstitutional because it violates article V, section 7 of the Texas Constitution as applied to him in this case.

A. Standard of Review

The constitutionality of a statute is a question of law that we review de novo. *Ex parte Lo*, 424 S.W.3d 10, 14 (Tex. Crim. App. 2013). A litigant who raises an "as applied" challenge to the constitutionality of a statute concedes the statute's general constitutionality and instead "asserts that the statute is unconstitutional as applied to his particular facts and circumstances." *State ex rel. Lykos v. Fine*, 330 S.W.3d 904, 910 (Tex. Crim. App. 2011). We presume that the statute is valid, and that the legislature has not acted unreasonably or arbitrarily. *See Rodriguez v. State*, 93 S.W.3d 60, 69 (Tex. Crim. App. 2002). The individual challenging the statute bears the burden to demonstrate its unconstitutionality. *Schlittler v. State*, 488

[1] The First Court of Appeals came to the same conclusion in an unpublished opinion when faced with an identical argument on appeal. *Clifton v. State*, No. 01-22-00641-CR, 2023 WL 5437181, at *9 (Tex. App.—Houston [1st Dist.] Aug. 24, 2023, no pet. h.) (mem. op. not released for publication). Our sister court further held that even if appellant preserved error, the record reflected compliance with article 21.02(2). *Id*.

S.W.3d 306, 313 (Tex. Crim. App. 2016).

B. Application

Government Code section 74.056(a) states:

> A presiding judge from time to time shall assign the judges of the administrative region to hold special or regular terms of court in any county of the administrative region to try cases and dispose of accumulated business.

Tex. Gov't Code § 74.056. Judge Terry Flenniken was appointed by the presiding judge of the Eleventh Administrative Judicial Region to sit in the 178th District Court of Harris County, pursuant to section 74.056.

Appellant contends Judge Flenniken's appointment violates article V, section 7 of the Texas Constitution, which sets forth the requirements for judicial districts and district court judges. Article V, section 7 states:

> The State shall be divided into judicial districts, with each district having one or more Judges as may be provided by law or by this Constitution. Each district judge shall be elected by the qualified voters at a General Election and shall be a citizen of the United States and of this State, who is licensed to practice law in this State and has been a practicing lawyer or a Judge of a Court in this State, or both combined, for four (4) years next preceding his election, who has resided in the district in which he was elected for two (2) years next preceding his election, and who shall reside in his district during his term of office and hold his office for the period of four (4) years, and who shall receive for his services an annual salary to be fixed by the Legislature. The Court shall conduct its proceedings at the county seat of the county in which the case is pending, except as otherwise provided by law. He shall hold the regular terms of his Court at the County Seat of each County in his district in such manner as may be prescribed by law. The Legislature shall have power by General or Special Laws to make such provisions concerning the terms or sessions of each Court as it may deem necessary.
>
> The Legislature shall also provide for the holding of District Court

> when the Judge thereof is absent, or is from any cause disabled or disqualified from presiding.

Tex. Const. art. V, § 7.

Focusing on the last sentence, appellant asserts that article V, section 7 "creates an absolute prohibition on the assignment of visiting judges outside of situations in which the elected district judge is absent, disabled, or disqualified." He thus contends that as applied to his case, Government Code section 74.056(a) violates this constitutional provision because the statute permitted Judge Flenniken to preside over the trial, even though there was nothing in the record indicating that Judge Johnson, the elected judge of the 178th District Court, was absent, disabled, or disqualified at the time of appellant's trial.

This court rejected this same argument under very similar circumstances in *Wiggins v. State*, 622 S.W.3d 556, 560 (Tex. App.—Houston [14th Dist.] 2021, pet. ref'd). In *Wiggins*, a visiting judge who had been assigned to the court pursuant to Government Code section 74.056(a) presided over Wiggins's trial. Like appellant, Wiggins asserted that section 74.056(a) was unconstitutional because the statute, as applied, permitted the visiting judge to preside over his trial, even though there was no evidence the elected judge was unable to preside over Wiggins's trial due to absence, disability, or disqualification. *Wiggins*, 622 S.W.3d at 559–60. After analyzing article V, section 7, and our sister court's analysis of the same issue, we held:

> The text's clear meaning directs the Legislature to enact legislation to ensure that a district court's business may continue unabated when the elected judge is absent, disabled, or disqualified. *See* Tex. Const. art. V, § 7, and interpretative commentary. But it does not in any respect constrain the Legislature to permitting the assignment of visiting judges only in the situations mentioned. As the *Smith* court observed, "[n]othing in the provision's text, or otherwise, indicates that the

> legislature lacks authority to enact legislation permitting eligible and qualified judges to be assigned to district courts even when the elected judge of the district court is not absent, disabled, or disqualified." *Smith [v. State*, No. 01-19-00442-CR, 2020 WL 6731656, at 6 (Tex. App.—Houston [1st Dist.] Nov. 17, 2020, no pet. h.) (mem. op., not designated for publication)].

Wiggins, 622 S.W.3d at 560 (internal footnote omitted).

Relying on the Constitution's language, its apparent purpose, and analogous authority, the *Smith* court determined that the appellant in that case had not met his burden to show that Government Code section 74.056(a) was unconstitutional as applied to him. *Smith*, 2020 WL 6731656, at *6. In *Wiggins*, we expressed agreement with *Smith*, stating, "Article V, section 7 ensures that the absence, disability, or disqualification of a judge will not operate to adjourn court or prevent the holding of court; but it does not limit the Legislature's ability to enact legislation permitting eligible and qualified judges to be assigned to district courts in other circumstances." *Wiggins*, 622 S.W.3d at 560.

Based on our interpretation of article V, section 7, we held that Wiggins had not met his burden to show that Government Code section 74.056(a) was unconstitutional as applied. The same is true here. Pursuant to *Wiggins*, we hold that appellant has not met his burden to show that Government Code section 74.056(a) was unconstitutional as applied to him in this case.

Appellant acknowledges this court's precedent but invites us to reconsider our holding in *Wiggins* based on our reliance on the First Court's opinion in *Smith* and its reliance on the Third Court of Appeals decision in *Dean v. Dean*, 214 S.W. 505, 507 (Tex. App.—Austin 1919, no writ). In *Dean*, the court addressed the argument that a statute—which at the time allowed for the election of a "special judge" to sit for the "regular" district court judge when the regular judge was "unwilling to hold

court"—violated article V, section 7 because "unwilling to hold court" did not constitute an absence, disqualification, or disability, as prescribed in the last paragraph of the constitutional provision. *Id*. (considering Rev. Civ. Stat. art. 1678). The court rejected the constitutional challenge, stating, "We do not think that, because the Constitution makes it the duty of the Legislature to provide for supplying the place of the regular judge in certain specified events, it is therefore deprived of the power to so provide in other events." *Id*.

Appellant attacks *Dean* on six grounds, asserting *Dean* is not persuasive because: (1) the opinion is 101 years old; (2) it has not been cited for this proposition more than once outside the Houston courts' reliance; (3) we are not bound by another court of appeals decision; (4) the State did not cite *Dean* in its briefing in *Smith* or *Wiggins*; (5) it "runs counter to the well-established rule of statutory construction known as *Expressio unius est exclusion alterius*"[2]; and (6) its holding is "contrary to a considerable amount of case law."[3]

We decline appellant's invitation to revisit our decision in *Wiggins* based on

[2] Appellant, citing *Johnson v. Second Injury Fund*, 688 S.W.2d 107, 108–09 (Tex. 1985), asserts the legal maxim *expressio unius est exclusio alterius* is an accepted rule of statutory construction in this state that the express mention or enumeration of one person, thing, consequence or class is equivalent to an express exclusion of all others.

[3] The "considerable amount of case law" on which appellant relies does not include any authority directly addressing article V, section 7 of the Texas Constitution or section 74.056(a) of the Government Code. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 798 (1995) (states may not impose qualifications for offices of United States representative or United States senator in addition to those set forth by the Constitution); *Hill Cnty. v. Sheppard*, 178 S.W.2d 261, 264 (Tex. 1944) (addressing whether the Legislature could create a statutory office with authority to take over the duties of county attorney); *State v. Moore*, 57 Tex. 307, 321 (1882), *overruled by Brady v. Brooks*, 89 S.W. 1052 (Tex. 1905) (holding county attorney had constitutional authority to prosecute any cases in his jurisdiction); *State v. Williams*, 938 S.W.2d 456, 459 (Tex. Crim. App. 1997) (priority of various litigants on court's docket is properly characterized as mere administration, and is subject to regulation by the legislature without violating separation of powers clause); *Meshell v. State*, 739 S.W.2d 246, 258 (Tex. Crim. App. 1987) (holding Speedy Trial Act unconstitutional).

his assault of the decision in *Dean*. Our decision in *Wiggins* was based on analysis of the plain language of article V, section 7's text, its apparent purpose, and the interpretive commentary of article V, section 7. We hold that appellant's as-applied challenge to the constitutionality of section 74.056(a) fails, and we overrule his second issue.

III. Sufficient evidence supports appellant's conviction.

In appellant's third issue he contends the evidence is insufficient to show that he knowingly solicited the complainant. Specifically, appellant contends that he thought he was soliciting "Abby," a 15-year-old girl. Because he was charged with soliciting Vanessa Brady, the peace officer he thought was Abby, appellant contends the evidence is insufficient to establish that he solicited Vanessa Brady.

When reviewing sufficiency of the evidence, we view all the evidence in the light most favorable to the verdict and determine, based on that evidence and any reasonable inferences therefrom, whether any rational factfinder could have found the elements of the offense beyond a reasonable doubt. *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). We do not sit as a thirteenth juror and may not substitute our judgment for that of the factfinder by reevaluating the weight and credibility of the evidence. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). Rather, we defer to the factfinder to fairly resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences from basic to ultimate facts. *Id*. Each fact need not point directly and independently to the appellant's guilt so long as the cumulative effect of all incriminating facts is sufficient to support the conviction. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

We measure whether the evidence presented at trial was sufficient to support a conviction by comparing it to the elements of the offense as defined by the

hypothetically correct jury charge for the case. *Zuniga v. State*, 551 S.W.3d 729, 733 (Tex. Crim. App. 2018). The hypothetically correct jury charge accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *Id*. The "law as authorized by the indictment" includes the statutory elements of the offense as modified by the indictment. *Id*.

A person commits the offense of online solicitation of a minor:

> if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.

Tex. Penal Code § 33.021(c). "Minor" is defined as "an individual who is younger than 17 years of age" or "an individual whom the actor believes to be younger than 17 years of age." Tex. Penal Code § 33.021(a)(1).

Appellant was indicted with the following:

> knowingly solicit[ing] over the internet, by an electronic message service and system V. Brady, hereafter styled the Complainant, an individual whom the Defendant believed to be younger than seventeen years of age to meet the Defendant with the intent that the Complainant would engage in sexual intercourse with the Defendant.

Appellant concedes he "solicited Vanessa Brady," but contends that because he thought Brady was a different person, he did not knowingly solicit Brady. In other words, appellant would have us connect the mens rea of "knowing" to the identity of the complainant rather than the act of solicitation.

Despite this novel argument, we have noted that the statute is meant to permit

police officers "to pos[e] as . . . minor[s]" to intercept sexual predators before they "physically appear" at a meeting place to engage in sexual activity with a child. *Ex parte Moy*, 523 S.W.3d 830, 837 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd); *see also Perales v. State*, 622 S.W.3d 575, 580–81 (Tex. App.—Houston [14th Dist.] 2021, pet. ref'd). The Court of Criminal Appeals similarly recognized the "legitimate goal" under the statute "of prosecuting 'sexual predators who attempt to solicit a minor, or a police officer posing as a minor, for unlawful activity when the individual does not show up for the meeting.'" *Ex parte Lo*, 424 S.W.3d at 26 (citing House Comm. on Criminal Jurisprudence, Bill Analysis, Tex. H.B. 2228, 79th Leg., R.S. (2005)); *see also Ex parte Ingram*, 533 S.W.3d 887, 897 (Tex. Crim. App. 2017) ("A police officer could be impersonating an individual under age 17 as part of a sting operation.").

We reject appellant's argument that the State was required to establish that he knew the complainant before he could be convicted of online solicitation of a minor. The gravamen of the offense of online solicitation of a minor as charged here is the knowing solicitation of a minor to meet a person, with the intent that the minor will engage in some form of sexual contact with that person or another. *Smith v. State*, 631 S.W.3d 484, 492 (Tex. App.—Eastland 2021, no pet.) (citing *Ganung v. State*, 502 S.W.3d 825, 828–29 (Tex. App.—Beaumont 2016, no pet.)). The act of "soliciting" is the prohibited conduct. *Ex parte Zavala*, 421 S.W.3d 227, 232 (Tex. App.—San Antonio 2013, pet. ref'd). The offense is completed at the time of the solicitation, and the requisite intent arises within the conduct of soliciting. *Ex parte Lo*, 424 S.W.3d at 22–23; *see* Tex. Penal Code § 33.021(c).

In this case, the indictment alleged that appellant knowingly solicited Officer Brady online with the intent that Brady would meet with and would engage in sexual contact with appellant and that appellant believed that Brady was a person younger

than 17 years of age at the time. With respect to the applicable mental state for this offense, a person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. Tex. Penal Code § 6.03(b).

Appellant's assertion that the mental state for the offense requires knowing the identity of the victim misses the mark. The "knowing" mental state applies to the solicitation of an individual appellant believed to be a minor. The record reflects text message exchanges between appellant and Brady showing that appellant was aware he was engaging in a conversation with a purported 15-year-old. Brady's online persona, Abby, referred to her age more than once, and appellant referenced her age, even asking when she would turn 16. The fact that appellant did not know he was actually communicating with an adult does not render the evidence insufficient to support his conviction.

Having reviewed the record in the light most favorable to the verdict, we conclude the evidence is sufficient to support appellant's conviction and overrule his third issue.

IV. Appellant failed to preserve his Fifth Amendment claim for review.

In appellant's fourth issue he asserts he was compelled to be a witness against himself in violation of the Fifth Amendment to the United States Constitution. Appellant asserts that the text messages he sent to Brady's online persona were involuntary statements, which were improperly admitted as violative of his right against self-incrimination.

The Fifth Amendment in relevant part states that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V; *see also Estelle v. Smith*, 451 U.S. 454, 463 (1981). Because the Fifth Amendment

speaks of "compulsion," if a defendant fails to affirmatively assert the privilege, but nonetheless provides incriminating statements, it cannot be said that the person has been "compelled" to provide evidence against himself. *Johnson v. State*, 357 S.W.3d 653, 657 (Tex. Crim. App. 2012). One must invoke the privilege to exercise it. *Bell v. State*, 554 S.W.3d 742, 747 (Tex. App.—Houston [1st Dist.] 2018, pet. ref'd).

At trial appellant made no objection to admission of the text chats or testimony about those chats other than to object that the chats had not been properly authenticated. Appellant has not raised the issue of authentication on appeal. In fact, in appellant's reply brief, he "agrees with the State's preservation argument in connection with Issue Four."

Because the record shows that appellant failed to timely invoke the Fifth Amendment privilege and voluntarily disclosed the allegedly incriminatory statements at issue, we hold he failed to preserve this challenge for our review. *See* Tex. R. App. P. 33.1. We overrule appellant's fourth issue.

V. The trial court erred in erroneously recording the victim's age in the judgment.

In appellant's fifth issue he asserts the judgment does not accurately state the victim's age. Article 42.01 of the Code of Criminal Procedure requires that the judgment contain, among other things, "In the event of conviction of an offense for which registration as a sex offender is required under Chapter 62, a statement that the registration requirement of that chapter applies to the defendant and a statement of the age of the victim of the offense[.]" Tex. Code Crim. Pro. art. 42.01 § 1A(27). The judgment in this case reflects, "Defendant is required to register as sex offender in accordance with Chapter 62, Tex. Code Crim. Proc. (For sex offender registration purposes only). The age of the victim at the time of the offense was 14 years." As noted above, the "victim" as alleged in the indictment was Officer Brady who was

not 14 years old. The online persona Brady presented was that of a 15-year-old. The judgment, therefore, incorrectly recited the age of the victim.

Appellant asks this court to reform the judgment to reflect the proper age of the victim, but appellant concedes the record does not reflect Brady's age. The State concedes appellant is correct and asks this court to reform the judgment to "to state either 'purported to be 15'—which conveys the information this part of the judgment is intended to convey—or 'unknown.'"

When the law requires the trial court to enter a particular finding in the written judgment of conviction, the trial court has no discretion not to enter the finding, and the failure to include it is a clerical error that can properly be corrected nunc pro tunc. *Ex parte Poe*, 751 S.W.2d 873, 876 (Tex. Crim. App. 1988). An appellate court has the authority to modify an incorrect judgment when it has the necessary information to do so. *See* Tex. R. App. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993). Rule 43.2 also gives this court authority to reverse and remand with instructions for the trial court to correct its final judgment. In this case, because we lack the necessary information to modify the trial court's judgment, we sustain appellant's fifth issue and remand to the trial court with instructions to correct its final judgment in conformity with article 42.01 section 1A(27) of the Code of Criminal Procedure.

VI. The trial court erred in assessing court costs.

In appellant's sixth issue he asserts the trial court erred in assessing court costs. Specifically, appellant contends the trial court erred in assessing court costs under a statute not applicable to appellant due to the date of commission of the offense.

In its judgment the trial court assessed court costs of $290 and

"Reimbursement Fees" of $540. The bill of costs lists consolidated court costs authorized by section 134.101 of the Local Government Code. The consolidated fees listed on the cost bill in the record only apply to defendants who were convicted of offenses committed on or after January 1, 2020. Tex. Loc. Gov't Code § 134.101. It is undisputed that the offense for which appellant was convicted was committed in 2019. The State concedes the court costs were improperly assessed and joins appellant's request for remand on this issue.

Because the record does not reflect the court costs that should have been assessed under previous legislation, we sustain appellant's sixth issue, reverse that portion of the court's judgment that improperly assessed court costs, and remand to the trial court for proper calculation of court costs. *See Wiggins*, 622 S.W.3d at 561 (sustaining appellant's issue on appeal when trial court improperly calculated court costs under the new statute).

CONCLUSION

We affirm the judgment of conviction and sentence. We reverse the portions of the judgment that inaccurately stated the age of the victim, and inaccurately assessed court costs. We remand to the trial court for proceedings consistent with this opinion.

/s/ Jerry Zimmerer
Justice

Panel consists of Justices Wise, Zimmerer, and Poissant.
Publish — Tex. R. App. P. 47.2(b).