

*Court of Appeals*  
*Fourth Court of Appeals District of Texas*  
*San Antonio*



**MEMORANDUM OPINION**

No. 04-12-00239-CR

Alfonso Laurence **SOLOMON**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 7th District Court, Smith County, Texas  
Trial Court No. 007-1425-09  
The Honorable Kerry L. Russell, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Catherine Stone, Chief Justice  
Karen Angelini, Justice  
Marialyn Barnard, Justice

Delivered and Filed: October 17, 2012

**AFFIRMED**

In this appeal, appellant Alfonso Solomon, who was adjudicated guilty of the offense of aggravated robbery, complains the trial court erred in assessing court costs of \$570.00. Solomon seems to contend the trial court erred in assessing \$570.00 in court costs because: (1) there is no evidence to support the imposition of increased costs of \$300.00 above the costs assessed at the time the trial court deferred a finding of guilt, particularly given that he produced evidence

showing he paid the original \$270.00 in court costs, and (2) the trial court failed to find Solomon has the ability to pay such costs. We affirm the trial court's judgment.

### **BACKGROUND**

Solomon, pursuant to a plea agreement, pled guilty to the offense of aggravated robbery. Pursuant to the plea agreement, the trial court deferred a finding of guilt and placed Solomon on community supervision for seven years. As part of its order of deferral, the court imposed \$270.00 in court costs, and one of the conditions of Solomon's community supervision was that he begin paying the court costs at a rate of \$20.00 per month once he was released from a substance abuse facility, which was another condition of his community supervision. A little over two years after the original deferment, the State filed an application to proceed to final adjudication, alleging Solomon violated numerous conditions of his community supervision, including a failure to repay court costs.

Solomon pled true to several of the State's allegations, and not true to others. He pled not true to the allegation that he failed to repay court costs. After a hearing, the trial court found each of the State's allegations true. Thereafter, the trial court found Solomon guilty of aggravated robbery, found the offense was committed with a deadly weapon, and sentenced Solomon to confinement for twenty years. In its written judgment, the trial court assessed \$570 in court costs, a \$300.00 increase from the court costs originally assessed at the time Solomon was placed on community supervision.

After the trial court rendered judgment, Solomon perfected this appeal.

### **ANALYSIS**

On appeal, Solomon challenges the assessment of costs. More specifically, he contends the assessment of \$570.00 in costs was erroneous because there is no evidence to support the

amount of the award, specifically the \$300.00 increase, and the trial court failed to find he has an ability to pay the assessed costs, which he argues it must do. Solomon asks that we modify the judgment to reflect an assessment of costs in the amount of \$270.00, the amount originally assessed when he was first placed on deferred adjudication.<sup>1</sup>

In response, the State argues that Solomon has failed to preserve this issue for our review. The State asserts Solomon failed to object or otherwise complain in the trial court about the imposition of court costs. Solomon counters that he had no time to object or complain. We agree Solomon has failed to preserve this issue for our review.

To preserve error for appellate review, the complaining party must make a specific objection or complaint, and obtain a ruling thereon. *Wilson v. State*, 71 S.W.3d 346, 349 (Tex. Crim. App. 2002). Moreover, “the objection must be made at the earliest possible opportunity.” *Id.* Requiring a party to present a timely complaint to the lower court ensures that trial courts are provided an opportunity to correct any error “at the most convenient and appropriate time—when the mistakes are alleged to have been made.” *Hull v. State*, 67 S.W.3d 215, 216 (Tex. Crim. App. 2002). With regard to alleged errors relating to aspects of sentencing, numerous courts have held that to preserve error for appellate review, the complainant must object at the sentencing hearing or raise the issue in a motion for new trial. *See, e.g., Hull*, 67 S.W.3d at 216 (holding appellant waived alleged due process error by failing to object to trial court’s “zero tolerance” policy regarding violation of conditions of probation); *Vidaurri v. State*, 49 S.W.3d 880, 885 (Tex. Crim. App. 2001) (holding appellant waived complaint that trial court failed to afford him a separate punishment hearing after adjudicating him guilty because he failed to raise the issue in motion for new trial); *Arriaga v. State*, 335 S.W.3d 331, 334 (Tex. App.—Houston

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<sup>1</sup> Solomon contests only the \$300.00 increase in costs. He does not challenge the original imposition of \$270.00 in costs.

[14th Dist.] 2010, pet. ref'd) (holding appellant waived complaint that life sentence for aggravated sexual assault of child was unconstitutionally excessive where he failed to make timely objection at sentencing hearing or to raise issue in motion for new trial); *Kim v. State*, 283 S.W.3d 473, 475 (Tex. App.—Fort Worth 2009, pet. ref') (holding appellant waived complaint about disproportionality of sentence by failing to object at sentencing or raise issue in motion for new trial). We hold that complaints regarding court costs, which are mere nonpunitive recoupments of judicial resources, are no less waivable. See *Weir v. State*, 278 S.W.3d 364, 365-66.

Here, the trial court orally pronounced sentence on March 16, 2012. In its oral pronouncement, the trial court did not mention imposition of costs. This is not fatal, however, because court costs need not be orally pronounced or incorporated by reference in the judgment to be effective. *Id.* at 365-67. Given that court costs were not included in the trial court's oral pronouncement, Solomon contends he had "no opportunity . . . to object to any portion of the final judgment." We disagree.

The final, written judgment was signed March 22, 2012, a mere six days after the oral pronouncement of sentence. Accordingly, when the written judgment, which included the assessment of court costs, was signed, Solomon still had twenty-five days to file a motion for new trial in which he could have presented his complaints about the assessment of costs to the trial court. See TEX. R. APP. P. 21.4(a) (stating defendant may file motion for new trial before, but no later than 30 days after, the date trial court imposes sentence in open court). Solomon, however, did not file a motion for new trial. Notably, he filed his notice of appeal on March 27, 2012, five days after the written judgment, indicating Solomon was aware of the imposition of costs more than three weeks before any motion for new trial was due.

Accordingly, given Solomon's failure to present this issue to the trial court, we hold he has not preserved this issue for our review. We therefore overrule his complaints about the imposition of costs.

**CONCLUSION**

Based on the foregoing, we affirm the trial court's judgment.

Marialyn Barnard, Justice

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