



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00807-CR

Sheri Jane **HUSTEAD**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 216th Judicial District Court, Gillespie County, Texas
Trial Court No. 5772
Honorable N. Keith Williams, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: September 13, 2017

AFFIRMED AS MODIFIED

Appellant Sheri Jane Husted was found guilty of possessing a controlled substance and was sentenced to two years of confinement in state jail. Her sentence was then suspended and she was placed on community supervision for four years. She was also ordered to pay \$2,000 in court-appointed attorney's fees. On appeal, Husted argues the evidence is insufficient to support the trial court's judgment against her for court-appointed attorney's fees because the presumption of her indigence was never rebutted. The State agrees with Husted.

Article 26.05(g) of the Texas Code of Criminal Procedure permits the trial court to order a defendant to re-pay the costs of court-appointed attorney's fees if the trial court "determines that a defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant" TEX. CODE CRIM. PROC. ANN. art. 26.05(g) (West Supp. 2016). Under article 26.05(g), "the defendant's financial resources and ability to pay are explicit critical elements in the trial court's determination of the propriety of ordering reimbursement of costs and fees." *Cates v. State*, 402 S.W.3d 250, 251 (Tex. Crim. App. 2013) (citation omitted).

Here, on December 15, 2015, the trial court found Husted to be indigent and appointed counsel to represent her. On September 13-14, 2016, Husted's trial was held. On November 10, 2016, the trial court sentenced Husted. At no time during these proceedings did the trial court make a finding that Husted's financial status had changed. A "defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs." TEX. CODE CRIM. PROC. ANN. art. 26.04(p) (West Supp. 2016). Because the trial court found Husted to be indigent and never found that her financial status had changed, there is no factual basis in the record to support the trial court's determination that Husted could pay her court-appointed attorney's fees. *See Cates*, 402 S.W.3d at 252.

We therefore modify the judgment to delete the requirement that Husted pay court-appointed attorney's fees. *See id.* As modified, the judgment of the trial court is **AFFIRMED**.

Karen Angelini, Justice

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