



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00134-CR

DAVID ALLAN HORN

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM CRIMINAL DISTRICT COURT NO. 1 OF TARRANT COUNTY
TRIAL COURT NO. 1421085D

MEMORANDUM OPINION¹

A grand jury indicted Appellant David Allan Horn for possession of a controlled substance in an amount less than one gram, enhanced to a third-degree felony by two prior state-jail felonies. See Tex. Health & Safety Code Ann. § 481.115(b) (West 2010); Tex. Penal Code Ann. § 12.425(a) (West Supp. 2016). In an open plea to the court, Horn pleaded guilty to the charged offense

¹See Tex. R. App. P. 47.4.

and true to the felony enhancements. The trial court placed him on deferred-adjudication community supervision for ten years and assessed certain court costs against him, including a “consolidated fee” of \$133 under section 133.102(a)(1) of the Texas Local Government Code. See Tex. Loc. Gov’t Code Ann. § 133.102(a)(1) (West Supp. 2016). In one issue, Horn contends that section 133.102 violates the separation of powers clause in the Texas constitution.² We affirm.

The State contends that Horn has forfeited his complaint by failing to raise it below. But we have recently held that this particular complaint may be raised for the first time on appeal. See *Ingram v. State*, 503 S.W.3d 745, 748 (Tex. App.—Fort Worth, pet. ref’d) (holding complaint that section 133.102 of the Texas Local Government Code violates the separation of powers clause of the Texas constitution may be raised for the first time on appeal); see also *Penigar v. State*, No. 02-16-00100-CR, 2016 WL 7405812, at *4 (Tex. App.—Fort Worth Dec. 22, 2016, pet. filed) (mem. op., not designated for publication) (holding same); *Carter v. State*, No. 02-16-00191-CR, 2016 WL 7240681, at *3 (Tex. App.—Fort Worth Dec. 15, 2016, pet. filed) (mem. op., not designated for publication) (holding same). Accordingly, Horn did not forfeit his complaint by failing to raise it below.

²In his brief, Horn’s counsel states that he “is aware that currently-binding authority holds directly against the argument” he presents in this appeal but that he has nevertheless presented it “to preserve [it] for further review and advocate for a change in the law.”

Horn argues that the allocations of 0.0088 percent of the \$133 consolidated court cost for “abused children’s counseling” under subsection 133.102(e)(1), of 5.0034 percent of the \$133 consolidated court cost for “law enforcement officers standards and education” under subsection 133.102(e)(5), and of 9.8218 percent of the \$133 consolidated court cost for “comprehensive rehabilitation” under subsection 133.102(e)(6) all impermissibly allow expenditures for purposes other than legitimate criminal justice purposes, and therefore they each constitute a tax rather than a court cost. See Tex. Local Gov’t Code § 133.102(e)(1), (e)(5), (e)(6) (West Supp. 2016). He therefore argues that section 133.102 violates the separation of powers clause of the Texas constitution because it makes the courts into tax gatherers.

We have previously rejected this precise complaint, and Horn presents no argument persuading us to depart from our prior precedent. See *Ingram*, 503 S.W.3d at 748–49 (holding that section 133.102(a)(1) does not violate the separation of powers clause of the Texas constitution); see also *Penigar*, 2016 WL 7405812, at *4 (same); *Carter*, 2016 WL 7240681, at *3 (same). Adhering to the holdings of our prior cases, we overrule Horn’s issue.

Having overruled Horn’s sole issue, we affirm the trial court’s judgment.

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: LIVINGSTON, C.J.; GABRIEL and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: February 23, 2017