



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

**NO. 02-16-00412-CR  
NO. 02-16-00413-CR**

DEMETRIUS JERRELL SMITH

APPELLANT

V.

THE STATE OF TEXAS

STATE

-----  
FROM THE 213TH DISTRICT COURT OF TARRANT COUNTY  
TRIAL COURT NOS. 1160083D, 1160085D

-----  
**MEMORANDUM OPINION<sup>1</sup>**  
-----

Appellant Demetrius Jerrell Smith appeals the trial court's judgments revoking his community supervision related to his aggravated robbery convictions. In two points, he contends that one of the judgments improperly includes a crime victim's compensation fee and that both judgments improperly

---

<sup>1</sup>See Tex. R. App. P. 47.4.

include reparations. As described below, we agree with parts of appellant's arguments and disagree with other parts, so we modify the trial court's judgments in both cases and affirm them as modified.

### **Background Facts**

A grand jury issued two indictments against appellant for aggravated robbery with a deadly weapon.<sup>2</sup> Appellant retained counsel, and at a single trial of both charges, he refused to enter pleas, so the trial court entered pleas of not guilty on his behalf.

The jury heard evidence and arguments and found appellant guilty of both charges. The parties presented more evidence and arguments concerning his punishment, and the jury assessed seven years' confinement on each offense but recommended the suspension of his sentences and his placement on community supervision. In accordance with the jury's recommendation, in each case, the trial court signed judgments reflecting appellant's conviction, the suspension of his sentence, and his placement on community supervision for seven years. One condition of community supervision in each case required appellant to pay \$60 per month as a supervision fee. Appellant expressly agreed to comply with all conditions of community supervision.

Within the seven-year term, in each case, the State filed a petition for the trial court to revoke appellant's community supervision. The State alleged that

---

<sup>2</sup>See Tex. Penal Code Ann. § 29.03(a)(2) (West 2011).

he had violated conditions by committing a new offense and by not completing a court-ordered program. Appellant pled that the State's allegations were not true, but after holding an evidentiary hearing, the trial court found them true, revoked appellant's community supervision, and imposed the seven-year sentence in each case. The trial court ordered appellant's sentences to run concurrently.

One of the judgments revoking community supervision required appellant to pay court costs of \$290 and reparations of \$379. The judgment in the other case required him to pay court costs of \$271 and reparations of \$1,085. From those judgments, appellant brought these appeals.

### **Crime Victim's Compensation Fee**

In his first point, appellant contends that the trial court's judgment relating to appellate cause number 02-16-00412-CR is erroneous because it includes the assessment of a \$33.87 crime victim's compensation fee as part of the \$271 in court costs. Appellant contends that there is "no statutory authority for the individualized assessment of this fee" and asserts that the fee must be assessed as part of a consolidated \$133 statutory fee that the trial court also charged as a cost. Thus, appellant asks us to modify the judgment by deleting the fee. The State "concedes that [a]ppellant should not have been charged a separate . . . Crime Victim's Compensation Fee" in addition to the \$133 fee.

Section 133.102 of the local government code requires a person convicted of a felony to pay a court cost of \$133. Tex. Loc. Gov't Code Ann.

§ 133.102(a)(1) (West Supp. 2016).<sup>3</sup> That section uses percentages to allocate the \$133 cost to several accounts and funds. *Id.* § 133.102(e). One of those funds is for “compensation to victims of crime.” *Id.* § 133.102(e)(10). The section directs the comptroller to distribute the costs to the funds listed within the section. *Id.* § 133.102(b), (e).

Appellant complains that the trial court “double-charged” him for the crime victim’s compensation fee—once as part of the \$133 cost and again with a separate \$33.87 cost. Appellant asks us to delete the \$33.87 cost; he does not challenge the imposition of the \$133 cost. We agree with appellant and with the State that section 133.102 required the assessment of the \$33.87 cost for compensation to victims of crime to be made as part of the \$133 cost, not through any separately-charged cost. See *id.* § 133.102(a)(1), (e)(10); see also *Aviles-Barroso v. State*, 477 S.W.3d 363, 398–99 (Tex. App.—Houston [14th Dist.] 2015, pet. ref’d) (considering the same issue and modifying a judgment to delete a crime victim’s compensation fee that a court assessed outside of the \$133 cumulative cost under section 133.102); *Owen v. State*, 352 S.W.3d 542, 548 n.10 (Tex. App.—Amarillo 2011, no pet.) (noting that the fee for

---

<sup>3</sup>The court of criminal appeals has held that provisions within section 133.102 are facially unconstitutional. *Salinas v. State*, No. PD-0170-16, 2017 WL 915525, at \*3–5 (Tex. Crim. App. Mar. 8, 2017). Appellant did not raise the constitutionality of section 133.102 as a basis for relief, and even if he had, this court, following *Salinas*, has declined to grant relief from section 133.102’s unconstitutional provisions. *Horton v. State*, No. 02-16-00229-CR, 2017 WL 1953333, at \*5 (Tex. App.—Fort Worth May 11, 2017, no pet. h.) (en banc) (citing *Salinas*, 2017 WL 1953333, at \*4–5).

“compensation to victims of crime” is “part of the \$133 consolidated fee to be assessed upon conviction of a felony”). We sustain appellant’s first point, and we will modify the trial court’s judgment related to appellate cause number 02-16-00412-CR (trial court cause number 1160083D) to delete the \$33.87 cost.<sup>4</sup> Thus, the trial court’s total amount of court costs related to that cause number will be \$237.13 (\$271 minus \$33.87).

### **Reparations**

In his second point, appellant contends that the trial court violated his right to due process—see U.S. Const. amend. XIV, § 1—when it imposed “reparations” in both judgments. He asks us to delete the reparations.

The trial court’s judgment related to appellate cause number 02-16-00412-CR requires appellant to pay \$1,085 as reparations. The record in that case contains a document from the county’s community supervision and corrections department (CSCD) stating that the \$1,085 comes from owed “PROBATION FEES.”<sup>5</sup> The judgment associated with appellate cause number 02-16-00413-

---

<sup>4</sup>The record indicates that at one point in that case, the trial court assessed a \$45 cost for compensation to victims of crime. The trial court’s judgment includes only a \$33.87 cost for that purpose, and appellant asks us only to delete the \$33.87 cost.

<sup>5</sup>In granting community supervision, a trial court must fix a fee of no more than \$60 per month, and if community supervision is later revoked, the trial court “shall enter the restitution due and owing on the date of the revocation.” Tex. Code Crim. Proc. Ann. arts. 42.03, § 2(b), 42.12, § 19(a) (West Supp. 2016); see *Tucker v. State*, Nos. 02-15-00265-CR, 02-15-00266-CR, 2016 WL 742087, at \*2 (Tex. App.—Fort Worth Feb. 25, 2016, pet. ref’d) (mem. op., not designated for publication).

CR requires appellant to pay \$379 as reparations. The record in that case contains a similar document from CSCD, but instead of classifying the \$379 as probation fees, the document states that the \$379 is “DUE TO CSCD” as an “ADMINISTRATIVE FINANCIAL OBLIGATION[.]”

With respect to the \$379 in reparations in cause number 02-16-00413-CR, appellant contends that the phrase “DUE TO CSCD” in the balance sheet is a vague, unspecified allegation that is inherently difficult to controvert and, therefore, “turns the concept of due process on its head.”<sup>6</sup> Appellant relies on our prior decision in *Lewis v. State*, 423 S.W.3d 451, 461 (Tex. App.—Fort Worth 2013, pet. ref’d). There, Lewis challenged reparations that were described on a balance sheet as “Due to CSCD.” *Id.* We noted that we were “unable to determine from the record what these figures represent[ed] or whether they were included as part of the original conditions of [Lewis’s] community supervision.” *See id.* Therefore, we struck the reparations identified as “Due to CSCD.” *Id.*

In accordance with our decision in *Lewis*, on two other occasions, including in a recent decision, we have struck reparations when a balance sheet described them only as “Due to CSCD” because we were unable to determine the authority for the fees. *See Sanchez v. State*, No. 02-15-00215-CR, 2016 WL 7405798, at \*4 (Tex. App.—Fort Worth Dec. 22, 2016, no pet.) (mem. op., not designated for publication) (“Conceding that the ‘Bill of Cost’ and the balance sheet provide

---

<sup>6</sup>The State does not respond to this contention.

some record support for the \$35 ‘DUE TO CSCD,’ we are nevertheless unable to determine the authority for this particular assessment. Following *Lewis*, we . . . strike the \$35 from the reparations.” (citation omitted)); *Boyd v. State*, No. 02-11-00035-CR, 2012 WL 1345751, at \*2 (Tex. App.—Fort Worth Apr. 19, 2012, no pet.) (mem. op., not designated for publication) (striking a \$89 fee “Due to CSCD” because we were “unable to determine from the record what this figure represent[ed] or whether it was included as part of the original conditions of Boyd’s community supervision”).

Like in the three decisions described above, we cannot discern from the record in cause number 02-16-00413-CR what the \$379 “DUE TO CSCD” relates to or what the authority is for that fee. Therefore, following those decisions, we will strike the \$379 in reparations related to cause number 02-16-00413-CR (trial court number 1160085D). See *Sanchez*, 2016 WL 7405798, at \*4; *Lewis*, 423 S.W.3d at 461; *Boyd*, 2012 WL 1345751, at \*2.

With respect to the remaining reparations of \$1,085 in cause number 02-16-00412-CR, appellant contends that the reparations violate due process guarantees because probation fees cannot be appropriately characterized as reparations. We have repeatedly rejected this argument, and we will not reexamine the argument here. See *Zamarripa v. State*, 506 S.W.3d 715, 716 (Tex. App.—Fort Worth 2016, pet. ref’d) (“[T]his court has repeatedly rejected [the] . . . argument that the assessment of community supervision fees as reparations violates due process or runs afoul of the code of criminal

procedure.”); *see also Tucker*, 2016 WL 742087, at \*2 (collecting cases in which we concluded that probation fees may be reparations).

Finally, appellant appears to argue that even if unpaid probation fees may be included as reparations, the State did not prove that he owed probation fees. Several Texas courts have held that a record is sufficient to support a requirement to pay owed probation fees as reparations when it contains an uncontradicted, unobjected-to CSCD balance sheet showing the arrearage. *See Edwards v. State*, Nos. 09-13-00360-CR, 09-13-00361-CR, 2014 WL 1400747, at \*2–3 (Tex. App.—Beaumont Apr. 9, 2014, no pet.) (mem. op., not designated for publication); *Conner v. State*, 418 S.W.3d 742, 744 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (“The balance sheet provides sufficient evidence that Conner owed \$910 in administrative fees and \$623 in court costs.”); *Strother v. State*, No. 14-12-00599-CR, 2013 WL 4511360, at \*3 (Tex. App.—Houston [14th Dist.] Aug. 22, 2013, pet. ref’d) (mem. op., not designated for publication); *see also Brown v. State*, No. 02-08-00063-CR, 2009 WL 1905231, at \*2 (Tex. App.—Fort Worth July 2, 2009, no pet.) (mem. op., not designated for publication) (relying on a balance sheet as establishing the amount of reparations owed). There is “no authority that the State must allege the failure to pay such fees as a ground for revocation in order to hold a defendant responsible for unpaid administrative fees.” *Tucker*, 2016 WL 742087, at \*1. In accordance with these decisions, we hold that in the absence of contradicting evidence showing that appellant did not



owe the reparations<sup>7</sup> or had already paid them, the CSCD balance sheet contained in the record is sufficient to support the reparations.

Appellant relies on our prior decision in *Strange v. State*, in which we held that the State presented no evidence supporting reparations. No. 02-14-00055-CR, 2014 WL 3868225, at \*1 (Tex. App.—Fort Worth Aug. 7, 2014, no pet.) (mem. op., not designated for publication). There, however, the record contained an itemized cost list showing that Strange did not owe any probation fees, and the State conceded that reparations should be deleted from the judgment. *Id.* We held that because the record did not contain “any evidence that [Strange] was in arrears” and because the “record show[ed] that [Strange] did not owe probation fees,” the reparations could not be sustained. *Id.* at \*2. The presence of the CSCD balance sheet in our record and the absence of evidence that appellant does not owe the reparations distinguishes this case from *Strange*.

For all of these reasons, we conclude that the record supports the trial court’s requirement for appellant to pay \$1,085 as reparations in cause number 02-16-00412-CR but that we must strike the reparations of \$379 in cause number 02-16-00413-CR. We sustain appellant’s second point in part and overrule it in part.

---

<sup>7</sup>As explained above, the record in each case establishes that upon appellant’s placement on community supervision, the trial court required him to pay \$60 per month.

## Conclusion

Having sustained appellant's first point and part of his second point, we modify the judgment in trial court cause number 1160083D to order appellant to pay \$237.13 (rather than \$271) in court costs, and we modify the judgment in trial court cause number 1160085D to delete the reparations of \$379. Having overruled the remainder of appellant's second point, we affirm the trial court's judgments as modified. See Tex. R. App. P. 43.2(b); *Lewis*, 423 S.W.3d at 461.

/s/ Terrie Livingston

TERRIE LIVINGSTON  
CHIEF JUSTICE

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

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

DELIVERED: May 25, 2017