



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-23-00008-CR  
No. 07-23-00009-CR

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**JIMMY SANTIAGO MARRUGO, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 47th District Court  
Randall County, Texas  
Trial Court No. 30059A, 30339A, Honorable Dee Johnson, Presiding

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August 24, 2023

**MEMORANDUM OPINION**

Before **QUINN, C.J.**, and **DOSS** and **YARBROUGH, JJ.**

Appellant, Jimmy Santiago Marrugo, was convicted by a jury of continuous sexual abuse<sup>1</sup> of “C.B.,”<sup>2</sup> a child younger than 14 years of age and was sentenced to forty-five

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<sup>1</sup> TEX. PENAL CODE ANN. § 21.02(b). An “act of sexual abuse” includes, subject to a statutory exception not relevant here, engaging in sexual contact with the child or causing the child to engage in sexual contact. TEX. PENAL CODE ANN. § 21.02(c)(2) (citing TEX. PENAL CODE ANN. § 21.11(a)).

<sup>2</sup> To protect C.B.’s privacy, we identify her by her initials. See TEX. CONST. art. 1 § 30(a)(1) (granting victims of crime “the right to be treated with fairness and with respect for the victim’s dignity and privacy throughout the criminal justice process”).

years of confinement.<sup>3</sup> Appellant brings three issues on appeal. We overrule Appellant's first issue but sustain his two issues pertaining to imposition of fees. We accordingly affirm the trial court's judgments as modified.

## **Background**

In January 2023, a four-day jury trial was held. Among other evidence put on by the State at trial, C.B. testified that when she was thirteen years old, she spent the night at a friend's duplex nearly every weekend during the 2009–2010 school year. During multiple occasions, Appellant, her friend's father, would enter the bedroom pull down her clothing and touch or kiss her vagina, buttocks, and anus. She testified these acts occurred two or more times over a period of more than thirty days, including more than ten times when Appellant touched her vagina.

## **Analysis**

### First Issue: Insufficient Indictment

In Appellant's first issue, he complains that the language in the indictment, despite alleging continuous sexual abuse, is deficient because it fails to allege dates of Appellant's acts or state C.B. was less than fourteen years old at the time. We find that the indictment tracks the statutory language setting out the elements for continuous sexual abuse of a child. "Everything should be stated in an indictment which is necessary

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<sup>3</sup> Prior to trial, Cause No. 30059A (continuous sexual assault of C.B.) was consolidated with No. 30339A (aggravated sexual assault of a second child) for trial. Appellant was also found guilty in No. 30339A and sentenced to 45-years' confinement to run concurrently with his sentence of 45-years' confinement in No. 30059A.

to be proved.” TEX. CODE CRIM. PROC. ANN. art. 21.03. Nevertheless, Appellant’s argument has been waived due to Appellant’s failure to object to the indictment or filing a written motion to quash prior to trial. See TEX. CODE CRIM. PROC. ANN. art. 1.14(b) (“If the defendant does not object to a defect, error, or irregularity of form or substance in an indictment or information 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 postconviction proceeding.”); *Ex parte Gibson*, 800 S.W.2d 548, 551 (Tex. Crim. App. 1990) (holding that indictment that failed to allege the year in which the offense was committed was a defect requiring a timely objection under article 1.14(b), regardless of whether it is framed as a form defect or fundamental defect). “All motions to set aside an indictment or information and all special pleas and exceptions shall be in writing.” TEX. CODE CRIM. PROC. ANN. art. 27.10. Appellant has therefore waived error to complain of the indictment’s alleged defect. Appellant’s first issue is overruled.

#### Issue Two: Court-Appointed Attorney Fee

Appellant contends that because he has been indigent throughout the proceedings before the trial court, this Court should reform the judgment to delete an assessment of \$1,000 for legal representation by his “COURT APPOINTED ATTORNEY (prior to 1/1/20)” from the “Final Bill of Costs” in Appeal No. 07-23-00008-CR. See *Johnson v. State*, 423 S.W.3d 385, 390 (Tex. Crim. App. 2014). “[A] criminal defendant need not preserve an objection in the trial court to raise a claim challenging the bases for the imposition of court costs for the first time on appeal.”).

The record reflects Appellant was first determined to be indigent in January 2020 at the outset of the case and in January 2023 when Appellant was again determined to be indigent when appellate counsel was appointed to represent him in this appeal.<sup>4</sup> The record also reflects there was never a finding by the trial court that he was able to re-pay any amount of the costs of court-appointed legal counsel. Thus, there is no factual basis in the record to support a determination that Appellant could re-pay any amount of the fees of court-appointed legal counsel.

The State does not oppose Appellant's request to delete the court-appointed attorney fee provision from the bill of costs. Because there is no factual basis in the record to support a determination that Appellant can pay any fees, we find the evidence is insufficient to support the trial court's order. The proper remedy is to reform the trial court's judgment by deleting the requirement that Appellant pay \$1,000 in court-appointed attorney's fees from the order assessing court costs. See *Cates v. State*, 402 S.W.3d 250, 251–52 (Tex. Crim. App. 2013). Appellant's second issue is sustained.

### Issue Three: Time Payment Fee

In both appeals, Appellant asserts the bill of costs improperly charges Appellant a "Time Payment Fee" of \$15<sup>5</sup> because his appeal remains pending. In *Dulin v. State*, the

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<sup>4</sup> On January 13, 2020, the trial court's judgment executed a form attached to the judgment entitled "Indigency Finding and Orders" in addition to the "BILL OF COSTS" which included as a "cost" of \$1,000 for "COURT APPOINTED ATTORNEY (prior to 1/1/20)." The indigency finding stated "[t]he defendant does not presently have sufficient resources or income to immediately pay all or part of the fine and costs *but will, in the future*, have the ability to pay the fine and costs at a later date or at designated intervals." Article 26.05(g) requires a present determination of financial resources and does not allow speculation about possible future resources." *Cates v. State*, 402 S.W.3d 250, 252 (Tex. Crim. App. 2013). The record contains no evidence related to Appellant's ability to pay fines or costs in the future.

<sup>5</sup> Article 102.030 provides "[a] person convicted of an offense shall pay a reimbursement fee of \$15 if the person: (1) has been convicted of a felony . . . and (2) pays any part of a fine, court costs, or restitution,

Court of Criminal Appeals held that the time-payment fee statute “was designed to be triggered by the finality of the judgment,” and that “[t]he pendency of an appeal stops the clock for purposes of the time[-]payment fee.” *Dulin v. State*, 620 S.W.3d 129, 133 (Tex. Crim. App. 2021). Imposition of time-payment fees against Appellant is premature because his timely notice of appeal tolled the time for him to pay costs imposed in the judgment adjudicating his guilt. See *Anthony v. State*, No. 07-22-00161-CR, 2023 Tex. App. LEXIS 4534, at \*2–3 (Tex. App.—Amarillo June 27, 2023, no pet.).

The State does not oppose Appellant’s request to delete the time payment fee from the bill of costs. Upon review of the record and applicable authority, we conclude that the trial court erred by entering a judgment requiring such reimbursement. Appellant’s third issue is sustained.

### **Conclusion**

We modify the trial court’s judgment in No. 30059A to delete the \$1,000 in fees for Appellant’s court-appointed attorney that was included in the “Bill of Costs” and delete the time-payment fees of \$15 included in each “Bill of Costs” in causes Nos. 30059A and 30339A. The trial court’s judgments are affirmed as modified.

Lawrence M. Doss  
Justice

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or another reimbursement fee, on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, restitution, or other reimbursement fee.” TEX. CODE CRIM. PROC. ANN. art. 102.030.