

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00107-CR

Luis Gerardo Diaz, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF BELL COUNTY, 426TH JUDICIAL DISTRICT
NO. 74498, HONORABLE FANCY JEZEK, JUDGE PRESIDING**

MEMORANDUM OPINION

A jury convicted Luis Gerardo Diaz of the second-degree felony of indecency with a child by contact. *See* Tex. Penal Code § 21.11. Punishment was assessed at eight years' imprisonment. On appeal, Diaz contends that the judgment reflecting \$581 in court costs should be modified because it includes an \$80 district clerk's fee, when only \$40 is authorized by statute. We will affirm the district court's judgment.

BACKGROUND

The record reflects that Diaz was indicted on two counts of indecency with a child by contact and that the State abandoned the second count at a pretrial hearing. Diaz proceeded to trial where a jury convicted him. The court assessed Diaz's punishment at eight years' imprisonment and ordered him to "pay all court costs in this case." The judgment of conviction shows court costs

of \$581. The certified bill of costs shows that the \$581 total includes \$80 for the district clerk's fee. This appeal followed.

DISCUSSION

In his only appellate issue, Diaz contends that the judgment reflecting \$581 in court costs should be modified because according to the bill of costs, it includes an \$80 district clerk's fee when only \$40 is authorized by statute. In Diaz's view, he was assessed double the amount of the statutorily authorized fee, and "this excess amount must be deleted from the judgment." The State responds that the \$80 amount represents the \$40 district clerk's fee and the \$40 jury fee, both of which are statutorily authorized and supported by the record.

Court costs are a "nonpunitive recoupment of the costs of judicial resources expended in connection with the trial of the case." *Johnson v. State*, 423 S.W.3d 385, 390 (Tex. Crim. App. 2014). Defendants convicted of felony offenses must pay certain statutorily mandated costs and fees. *Martinez v. State*, 510 S.W.3d 206, 208 (Tex. App.—Houston [1st Dist.] 2016, no pet.). Only statutorily authorized court costs may be assessed against a criminal defendant. *Johnson*, 423 S.W.3d at 389. We review a challenge to the assessment of court costs to determine if there is a basis for the cost, and not whether sufficient evidence supports its imposition. *See Johnson*, 423 S.W.3d at 390; *Martinez*, 510 S.W.3d at 208, 209.

Here, the record provides a basis for the costs assessed. The record reflects, and Diaz does not dispute, that he was convicted of an offense in district court. The imposition of a \$40 district clerk's fee is authorized by article 102.005(a) of the Texas Code of Criminal Procedure for defendants convicted in district courts. *See Tex. Code Crim. Proc. art. 102.005(a)* ("A defendant

convicted of an offense in a . . . district court shall pay for the services of the clerk of the court a fee of \$40.”). Diaz incorrectly assumes that the \$80 fee in the bill of costs consisted only of the district clerk’s fee. *Cf. id.*; see *Cook v. State*, No. 10-12-00204-CR, 2014 Tex. App. LEXIS 2831, at *3–5 (Tex. App.—Waco Mar. 13, 2014, no pet.) (mem. op., not designated for publication) (rejecting challenge to assessment of court costs, noting that although statutorily mandated fee assessments were incorrectly listed to different line items, net result of costs imposed was same).

However, the record reflects, and Diaz does not dispute, that he was convicted by a district court jury. A separate \$40 jury fee is authorized by article 102.004 of the Texas Code of Criminal Procedure for defendants convicted by a jury. Tex. Code Crim. Proc. art. 102.004(a) (“A defendant convicted by a jury in a . . . district court shall pay a jury fee of \$40.”). Although the certified bill of costs shows that the jury fee was not listed as a separate line item from the district clerk’s fee, Diaz cites no authority requiring such a level of specificity within the itemized bill of costs. See, e.g., *Love v. State*, No. 03-15-00462-CR, 2016 Tex. App. LEXIS 2877, at *5 (Tex. App.—Austin Mar. 22, 2016, no pet.) (mem. op., not designated for publication). Further, both the district clerk’s fee and the jury fee were statutorily mandated by the Code of Criminal Procedure, and both such fees were supported by this record. See *Martinez*, 510 S.W.3d at 209 (rejecting challenge to assessment of costs because events reflected in record arguably might have served as basis for imposition of complained-of costs).

We conclude that the record provides a basis for the full assessment of costs in the judgment. See *Johnson*, 423 S.W.3d at 390; *Martinez*, 510 S.W.3d at 208, 209. We overrule Diaz’s appellate issue.

CONCLUSION

We affirm the district court's judgment.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Pemberton and Goodwin

Affirmed

Filed: July 7, 2017

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