

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**ON REMAND**

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**NO. 03-19-00148-CR**

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**Michael Andrew Horn, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE 33RD DISTRICT COURT OF LLANO COUNTY  
NO. CR7580, THE HONORABLE J. ALLAN GARRETT, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

A jury convicted appellant Michael Andrew Horn of the second-degree felony offense of aggravated assault with a deadly weapon, *see* Tex. Penal Code §§ 22.01(a)(2), .02(a)(2), and sentenced appellant to confinement for twenty years in the Institutional Division of the Texas Department of Criminal Justice, *see id.* § 12.33. In the bill of costs, the trial court assessed appellant a \$25 time payment fee.

In his sole appellate issue, appellant did not challenge the jury's verdict but challenged 90% of the time payment fee that was assessed against him. On February 24, 2021, this Court sustained his issue and modified the trial court's judgment to reduce the assessed court costs by \$22.50 and, as modified, affirmed the judgment of conviction. *See Horn v. State,*

No. 03-19-00148-CR, 2021 WL 710735, at \*1 (Tex. App.—Austin Feb. 24, 2021, pet. granted) (mem. op., not designated for publication).

Citing its holding in *Dulin v. State*, 620 S.W.3d 129 (Tex. Crim. App. 2021), the Texas Court of Criminal Appeals granted review on its own motion on the following ground: “Should the ‘Time Payment Fee’ be struck as prematurely assessed?” *See Horn v. State*, No. PD-0209-21, 2021 WL 1936537, at \*1 (Tex. Crim. App. May 12, 2021) (not designated for publication). The Court of Criminal Appeals cited its holding in *Dulin* that “the time payment fee was assessed prematurely because the pendency of appeal suspends the obligation to pay court costs”; explained that as a result, there was no need to reach the constitutional arguments concerning the time payment fee; vacated this Court’s judgment; and remanded the case to this Court for proceedings consistent with its opinion. *See id.*

Following the directive from the Court of Criminal Appeals, we conclude that the \$25 time payment fee should be struck from the judgment of conviction as prematurely assessed without reaching appellant’s challenge to the constitutionality of 90% of the fee. Thus, we modify the trial court’s judgment of conviction to strike the \$25 assessed time payment fee and, as modified, we affirm the judgment of conviction.

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Melissa Goodwin, Justice

Before Justices Goodwin, Kelly, and Smith

Modified and, As Modified, Affirmed On Remand

Filed: July 30, 2021

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