NO. 12-21-00231-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

CHRISTOPHER RENOR EARL, APPELLANT	*§*	***APPEAL FROM THE 7TH***
V.	*§*	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	*§*	***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION

Christopher Renor Earl appeals his conviction for murder. He presents four issues on appeal. We modify the judgment and affirm as modified.

BACKGROUND

In October 2019, Appellant moved in with his mother and stepfather, Retha and Roy Bailey. The Baileys agreed to allow Appellant to reside with them while Appellant looked for a job. By December, Roy was irritated that Appellant had not found employment. During the morning of December 23, Roy and Appellant had several discussions about Appellant looking for a job. At one point, Appellant asked Roy if he could help. And Roy responded, "Yes, get out of my blankety-blank face and get out of my house." Roy also told Appellant, "You're sorry. You don't work." Retha heard Appellant respond, "What did you say to me?" Appellant then left the kitchen where Retha was. Retha heard a thump and Roy say, "You done hit me." Retha then left the kitchen to separate the men.

Retha saw Appellant hit Roy in the face and stepped between the men. Appellant picked her up, moved her out of the way, and hit Roy one or two more times. Retha stepped between the men again, at which point she and Roy fell to the ground. Appellant grabbed a cane from the corner of the room and hit Roy in the head. Retha kicked the cane out of Appellant's hand.

Appellant began kicking Roy while he was on the ground. Retha placed her body on top of Roy's to protect him. But Appellant kept kicking, breaking Retha's arm. After Retha told Appellant to leave, he left the house. He attempted to kick Roy one more time as he walked back through the room after retrieving his keys.

Retha and Roy went to the hospital for their injuries and the medical staff insisted the police be contacted. Roy had a subdural hematoma, which required surgical intervention to release the pressure and remove the clot. The next day, Roy had a seizure. A CAT scan showed bleeding inside the frontal lobe of his brain. According to the neurosurgeon, surgery could not repair the bleeding. Due to the severe trauma, Roy became comatose and required both a breathing and feeding tube. Roy eventually died from his injuries.

Appellant was arrested and charged by indictment with murder. He pleaded "not guilty," and the matter proceeded to a jury trial. At the conclusion of the trial, the jury found Appellant "guilty" and sentenced him to life in prison. This appeal followed.

EVIDENTIARY SUFFICIENCY

In his first issue, Appellant contends the evidence is legally insufficient to support his conviction. Specifically, he urges there is no evidence he intended to cause Roy's death.

Standard of Review

The ***Jackson v. Virginia***[1] legal sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the state is required to prove beyond a reasonable doubt. *See* ***Brooks v. State***, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). Legal sufficiency is the constitutional minimum required by the Due Process Clause of the Fourteenth Amendment to sustain a criminal conviction. *See* ***Jackson***, 443 U.S. at 315–16, 99 S. Ct. at 2786–87; *see also* ***Escobedo v. State***, 6 S.W.3d 1, 6 (Tex. App.–San Antonio 1999, pet. ref'd). The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See* ***Jackson***, 443 U.S. at 320, 99 S. Ct. at 2789; *see also* ***Johnson v. State***, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993). The evidence is examined in the light most favorable to the verdict. *See* ***Jackson***, 443 U.S. at 320, 99 S. Ct. at 2789; ***Johnson***, 871 S.W.2d at 186. A jury is free to believe all or any part of a witness's

[1] 443 U.S. 307, 315-16, 99 S. Ct. 2781, 2786-87, 61 L. Ed. 2d 560 (1979).

testimony or disbelieve all or any part of that testimony. *See* ***Lee v. State***, 176 S.W.3d 452, 458 (Tex. App.–Houston [1st Dist.] 2004), *aff'd*, 206 S.W.3d 620 (Tex. Crim. App. 2006). A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. *See* ***Tibbs v. Florida***, 457 U.S. 31, 41–42, 102 S. Ct. 2211, 2217–18, 72 L. Ed. 2d 652 (1982).

Circumstantial evidence is as probative as direct evidence in establishing guilt, and circumstantial evidence alone can be sufficient to establish guilt. ***Rodriguez v. State***, 521 S.W.3d 822, 827 (Tex. App.–Houston [1st Dist.] 2017, no pet.) (citing ***Sorrells v. State***, 343 S.W.3d 152, 155 (Tex. Crim. App. 2011)). Each fact need not point directly and independently to the guilt of the appellant, provided that the cumulative force of all the incriminating circumstances is sufficient to support the conviction. *See* ***Hooper v. State***, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Juries are permitted to draw multiple reasonable inferences so long as each inference is supported by the evidence presented at trial. ***Id.*** at 15. Juries are not permitted to reach conclusions based on mere speculation or factually unsupported inferences or presumptions. ***Id.*** An inference is a conclusion reached by considering other facts and deducing a logical consequence from them, while speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented. ***Id.*** at 16.

The sufficiency of the evidence is measured against the offense as defined by a hypothetically correct jury charge. *See* ***Malik v. State***, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge would include one that "accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant is tried." ***Id.***

Applicable Law

As applicable to this case, a person commits murder if he (1) intentionally or knowingly causes the death of an individual or (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual. TEX. PENAL CODE ANN. § 19.02(b)(1), (2) (West 2019). These methods of committing murder are not separate offenses, but alternative methods of committing the same offense. ***Smith v. State***, 436 S.W.3d 353, 378 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd); ***Lozano v. State***, 359 S.W.3d 790, 821 (Tex. App.—Fort Worth 2012, pet. ref'd); *see* ***Aguirre v. State***, 732 S.W.2d 320, 325–26 (Tex. Crim.

App. [Panel Op.] 1982) (op. on reh'g) (holding that an indictment alleging theories of both intentional and knowing murder and felony murder did not allege different offenses, but only different ways of committing the same offense); *accord* ***Barfield v. State***, 202 S.W.3d 912, 916 (Tex. App.—Texarkana 2006, pet. ref'd).

The State's indictment alleged two alternate theories of murder: that he intentionally or knowingly caused Roy's death or that he intentionally caused bodily injury and committed an act clearly dangerous to human life that caused Roy's death. The trial court charged the jury in the disjunctive, tracking the indictment, and the jury returned a general verdict. When a general verdict is returned and there is sufficient evidence to support a finding under any of the alleged theories submitted, we will uphold the verdict. ***Fuller v. State***, 827 S.W.2d 919, 931 (Tex. Crim. App. 1992) (en banc); ***Aguirre***, 732 S.W.2d at 326. We therefore need only determine whether there is sufficient evidence to support a guilty finding under one of the theories submitted to the jury.

A jury may infer intent from the acts and words of the defendant, the manner in which the offense was committed, the nature of the wounds inflicted, and the relative size and strength of the parties. *See* ***Patrick v. State,*** 906 S.W.2d 481, 487 (Tex. Crim. App. 1995); ***West v. State,*** 846 S.W.2d 912, 914 (Tex. App.—Beaumont 1993, pet. ref'd).

The Court of Criminal Appeals has noted that under Section 19.02(b)(2), the required mens rea "is the intent to cause serious bodily injury and the statute does not add a culpable mental state to the conduct that caused the death." ***Cavazos v. State***, 382 S.W.3d 377, 384 (Tex. Crim. App. 2012). The State must show that the individual, acting with the conscious objective or desire to create a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of any bodily member or organ, caused the death of an individual. ***Lugo-Lugo v. State***, 650 S.W.2d 72, 81 (Tex. Crim. App. 1983).

In order to prove the second element of murder, it must be shown that the act intended to cause serious bodily injury was objectively clearly dangerous to human life. ***Id.*** Proof of the existence of a culpable mental state most often depends upon circumstantial evidence. ***Lee v. State,*** 21 S.W.3d 532, 539 (Tex. App.—Tyler 2000, pet. ref'd); ***Morales v. State,*** 828 S.W.2d 261, 263 (Tex. App.—Amarillo 1992), *aff'd,* 853 S.W.2d 583 (Tex. Crim. App. 1993). Generally, the culpable mental state must be inferred from the acts of the accused or from the surrounding circumstances, including not only acts, but also words and conduct. ***Montgomery v.***

State, 198 S.W.3d 67, 87 (Tex. App.—Fort Worth 2006, pet. ref'd); ***Lee,*** 21 S.W.3d at 539; ***Morales,*** 828 S.W.2d at 263; *see* ***Ledesma v. State,*** 677 S.W.2d 529, 531 (Tex. Crim. App. 1984).

Analysis

Appellant urges the evidence is insufficient to show he intended to cause Roy's death. Appellant testified at trial that he intended to hit Roy but did not intend to kill him. According to Appellant, Roy was sitting up and talking when he left the house. In his brief, Appellant argues, "[i]f [Appellant] intended to murder [Roy] or cause him serious bodily injury, [Appellant] would not have left the residence in this situation."

However, Appellant also testified as follows:

> Q Okay. So I want to talk about what happened that night. You said you were a little mad, correct?
> A I was mad.
> Q You were mad. You were angry, correct?
> A Yes, sir.
> Q So everything you did to Mr. Bailey, at 73, you did because you were mad and you were angry?
> A Yes, sir.
> Q Safe to say, there's – there's no way around it -- you wanted to hurt him?
> A Yeah.
> . . .
> Q Okay. And you recall your mom said that you came out, that she came out; and when she came out, after hearing that pop, she saw you hit him again? Two hits to his face, correct?
> A Yes, sir.
> Q After the first hit, you could have walked away, couldn't you?
> A Could have, yes.
> Q Yeah. But you wanted to go back and hit him a second time?
> A At that time -- in any fight I've – I've never seen anybody just want to -- not necessarily want to stop. Just – they're in the vein of -- vein of – they're -- you're in the zone. You're – you're –
> Q So you were in the zone when you killed Mr. Bailey?
> A I wasn't in the zone.
> Q You were in the zone? You were in the murder zone when you killed him?
> A No. No murder zone. I wasn't trying to kill him.
> Q Okay. But you were sure trying to beat him, weren't you?
> A I was trying to fight. Yes.
> . . .
> Q So rather than -- when your mom and your dad are helpless on the floor, rather than walk one way over there to get away from them, you reach and you grab this. Do you remember that?
> A Yes.
> Q And while they're laying on the ground, you go the extra step to pick up something that's a deadly weapon, and then you take it and you hit him over the head; is that right?
> A Yes, sir.
> Q So you didn't want to just hit him. You wanted to make sure you finished it and grabbed something sturdy and good to crack him in the head, didn't you?
> A Yes, sir.

The evidence shows that Appellant was angry when he hit Roy repeatedly, causing him to fall to the ground. Once Roy was on the ground, Appellant hit him in the head with a cane and kicked him repeatedly. The beating administered to Roy by Appellant resulted in a subdural hematoma caused by blunt force trauma. It also resulted in bleeding in his frontal lobe, which is consistent with a head injury. These injuries led to Roy's death.

After viewing the evidence in the light most favorable to the verdict, any rational factfinder could have found that Appellant intended to cause serious bodily injury when he committed an act objectively clearly dangerous to human life that caused Roy's death. *See* ***Valenzuela v. State***, No. 11-11-00336-CR, 2013 WL 3203685, at *3 (Tex. App.—Eastland June 20, 2013, pet. ref'd) (mem. op., not designated for publication) (finding evidence sufficient to support murder conviction under similar circumstances); ***Lugo-Lugo***, 650 S.W.2d at 81. We overrule Appellant's first issue.

CHARGE ERROR

In his second issue, Appellant urges he was entitled to an instruction on the lesser-included charge of manslaughter. And in his third issue, he contends an instruction on sudden passion should have been included in the punishment charge.

Standard of Review

The standard of review for jury charge error is the same regardless of whether error was alleged to have occurred during the guilt/innocence phase or the punishment phase. Our review of an alleged jury charge error involves a two-step process. ***Abdnor v. State***, 871 S.W.2d 726, 731 (Tex. Crim. App. 1994). Initially, we determine whether error occurred; we then "determine whether sufficient harm resulted from the error to require reversal." ***Id.*** at 731–32; *see* ***Almanza v. State***, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984) (op. on reh'g). The level of harm that must be shown as having resulted from the erroneous jury instruction depends on whether the appellant properly objected to the error. ***Abdnor***, 871 S.W.2d at 732.

When a proper objection is made at trial, a reversal is required if there is "some harm" "calculated to injure the rights of defendant." ***Id.*** (quoting ***Williams v. State***, 547 S.W.2d 18, 20 (Tex. Crim. App. 1977)). But, when the defendant fails to object "to the charge, we will not reverse the jury-charge error unless the record shows 'egregious harm' to the defendant." ***Ngo v. State***, 175 S.W.3d 738, 743–44 (Tex. Crim. App. 2005) (citing ***Almanza***, 686 S.W.2d at 171). In

determining whether the error caused egregious harm, we must decide whether the error created such harm that the appellant did not have a "fair and impartial trial." TEX. CODE CRIM. PROC. ANN. art. 36.19 (West 2006); ***Allen v. State***, 253 S.W.3d 260, 264 (Tex. Crim. App. 2008); ***Almanza***, 686 S.W.2d at 171; ***Boones v. State***, 170 S.W.3d 653, 659 (Tex. App.–Texarkana 2005, no pet.).

"In order to preserve error relating to a jury charge, there must either be an objection or a requested charge." ***Vasquez v. State***, 919 S.W.2d 433, 435 (Tex. Crim. App. 1996). Rule 33.1 of the Texas Rules of Appellate Procedure requires that a complaint be made "with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context." TEX. R. APP. P. 33.1(a)(1)(A). "[N]o talismanic words are needed to preserve error as long as the court can understand from the context what the complaint is." ***Clark v. State***, 365 S.W.3d 333, 337 (Tex. Crim. App. 2012).

Finally, a trial court is required to charge the jury on any defensive issue raised by the evidence, "regardless of its substantive character." ***Brown v. State***, 955 S.W.2d 276, 279 (Tex. Crim. App. 1997). An accused "is entitled to an affirmative defensive instruction on every issue raised by the evidence regardless of whether it is strong, feeble, unimpeached, or contradicted, and even if the trial court is of the opinion that the testimony" is not credible. ***Id.*** (quoting ***Williams v. State***, 630 S.W.2d 640, 643 (Tex. Crim. App. 1982)). It is within the jury's purview to decide whether to accept or reject a properly raised defensive theory. ***Woodfox v. State***, 742 S.W.2d 408, 409–10 (Tex. Crim. App. 1987).

Lesser Included Offense

When we review a trial court's decision to include or exclude a lesser included offense, we consider the charged offense, the statutory elements of the lesser offense, and the evidence actually presented at trial. ***Hayward v. State,*** 158 S.W.3d 476, 478 (Tex. Crim. App. 2005). We then employ a two-part test. First, the lesser included offense must be included with the proof necessary to establish the offense charged. ***Rousseau v. State,*** 855 S.W.2d 666, 672–73 (Tex. Crim. App. 1993). Second, some evidence must exist in the record that, if the defendant is guilty, he is guilty only of the lesser offense. ***Id.*** If evidence from any source raises the issue of a lesser included offense, a requested charge on that offense must be included. ***Luna v. State,*** 264 S.W.3d 821, 830 (Tex. App.—Eastland 2008, no pet.).

Manslaughter is a lesser included offense of murder. ***Cavazos,*** 382 S.W.3d at 386; ***Moore v. State,*** 969 S.W.2d 4, 9 (Tex. Crim. App. 1998). Therefore, we will proceed to discuss whether there is some evidence in the record that shows that, if Appellant is guilty at all, he is guilty only of manslaughter.

A person commits the offense of manslaughter if he recklessly causes the death of an individual. TEX. PENAL CODE ANN. § 19.04 (West 2019). The Penal Code further provides:

> A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Id. § 6.03(c) (West 2021).

Before Appellant would be entitled to the lesser included offense instruction, the evidence must show the lesser included offense is a "valid, rational alternative" to murder. ***Cavazos***, 382 S.W.3d at 385. The evidence must be germane to the lesser included offense and rise to a level that a rational jury could find that, if Appellant is guilty, he is guilty only of the lesser included offense of manslaughter. ***Id.*** In this case, there was no evidence directly germane to recklessness. Repeatedly hitting someone until he falls to the ground, then continuing to hit him, kick him, and beat him with a cane, even when his mother intervened, and doing nothing to assist the victim does not rationally support an inference that Appellant acted recklessly at the time he delivered the blows that ultimately led to Roy's death. *See* ***Valenzuela***, 2013 WL 3203685, at *3. The evidence does not rise to the level that would allow a rational jury to find that, if Appellant is guilty, he is guilty only of manslaughter. *See* ***Cavazos***, 382 S.W.3d at 385. Because there was no evidence that raised the issue of the lesser included offense of manslaughter, the trial court did not err when it refused to submit that instruction. Appellant's second issue is overruled.

Sudden Passion

Next, Appellant contends that the trial court erred when it failed to include an instruction on sudden passion during the punishment phase of the proceedings. "Sudden passion" is "passion directly caused by and arising out of provocation by the individual killed" which arises at the time of the murder. TEX. PENAL CODE ANN. § 19.02(a)(2). "At the punishment stage of the trial,

the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause." ***Id***. § 19.02(d). "If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree." ***Id***. "'Adequate cause' means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection." ***Id***. § 19.02(a)(1).

To be entitled to a jury instruction on the issue of sudden passion during the punishment phase, the record must at least minimally support the following inferences: (1) that the defendant acted under the immediate influence of passion such as terror, anger, rage, or resentment; (2) that his sudden passion was induced by some provocation by the deceased or another acting with him, which provocation would commonly produce such a passion in an individual of ordinary temper; (3) that he committed the murder prior to regaining his capacity for cool reflection; and (4) that a causal connection existed "between the provocation, the passion, and the homicide." ***McKinney v. State***, 179 S.W.3d 565, 569 (Tex. Crim. App. 2005). Passion that is "solely the result of former provocation" does not suffice. ***Hobson v. State***, 644 S.W.2d 473, 478 (Tex. Crim. App. 1983) (quoting TEX. PENAL CODE ANN. § 19.04(b)). If a defendant presents evidence of sudden passion, he or she is entitled to an instruction on this mitigating circumstance even if the evidence raising such an issue is contradicted, weak, or unbelievable. ***Trevino v. State***, 100 S.W.3d 232, 238 (Tex. Crim. App. 2003) (per curiam). The question is whether there was any evidence from which a rational jury could infer such passion. ***Moore***, 969 S.W.2d at 11.

Evidence of fear alone, or self-defense, is not sufficient to raise sudden passion. The record must show some evidence of each element of Section 19.02(d). TEX. PENAL CODE ANN. § 19.02(d). An actor who fears for his or her life may calmly and deliberately assault his or her assailant without panic or hysteria. ***Fry v. State***, 915 S.W.2d 554, 559 (Tex. App.–Houston [14th Dist.] 1995, no pet.). Further, not all testimony regarding anger or fear rises to the level of sudden passion. ***Gonzales v. State***, 717 S.W.2d 355, 357 (Tex. Crim. App. 1986). In order "[f]or a claim of fear [or anger] to rise to the level of sudden passion, the defendant's mind must be rendered incapable of cool reflection." ***Id***. (holding that sudden passion instruction not necessary where there was testimony indicating defendant was emotionally aroused at the time of shooting).

On appeal, Appellant contends that when Roy ordered Appellant to leave, "this type of confrontation would produce such a passion even in a person of ordinary temper that would render Appellant incapable of cool reflection and this provocation immediately caused the homicide." Appellant also references past disagreements and arguments between Appellant and Roy regarding Appellant's unemployment.[2]

The evidence at trial showed that Appellant was indeed angry at Roy. However, it also showed that he acted in a deliberate manner. Although Appellant testified that he could have stopped his assault on Roy at several times, he admitted wanting to continue to "hurt" Roy even after Roy fell to the floor. In addition, the evidence showed that even after Appellant left the room to get his keys, he attempted to continue the assault. His mother pushed him out of the door instead. While Roy did tell Appellant to leave the house and seemingly cursed at him, these actions do not rise to adequate cause. There is no evidence Roy did anything else, such as displaying a deadly weapon or striking Appellant, to provoke the attack. *See* ***McKinney***, 179 S.W.3d at 570 (simply yelling and pushing appellant is insufficient to raise sudden passion instruction). There is no evidence that Roy's telling Appellant to leave the house produced such a degree of anger, rage, resentment, or terror in Appellant sufficient to render his mind incapable of cool reflection. *See* ***id.***; TEX. PENAL CODE ANN. § 19.02(a). Nor does the history of disagreements warrant a sudden passion instruction. *See* ***id.***; ***Hobson***, 644 S.W.2d at 478. Therefore, the trial court did not err in refusing the instruction. Appellant's third issue is overruled.

COURT COSTS

In his fourth issue, Appellant contends certain costs were improperly assessed. Specifically, he urges he was erroneously charged the local consolidated fee on conviction of a felony, certain judicial support and record management fees, and the specialty court fee. The State concedes that the local consolidated fee on conviction of a felony and the specialty court fee were improperly assessed.

[2] At trial, Appellant did not argue any specific evidence entitled him to a sudden passion instruction. When asked for case law to support the requested instruction, Appellant's attorney stated "[j]ust the evidence in this case, Judge."

Standard of Review and Applicable Law

We review the assessment of court costs on appeal to determine if there is a basis for the cost, not to determine if there was sufficient evidence offered at trial to prove each cost, and traditional ***Jackson v. Virginia*** evidentiary-sufficiency principles do not apply. ***Johnson v. State***, 423 S.W.3d 385, 389-90 (Tex. Crim. App. 2014) (citing ***Jackson***, 443 U.S. at 316, 99 S. Ct. at 2787). Appellant need not have objected at trial to raise a claim challenging the bases of assessed costs on appeal. ***Id.*** at 391. When a trial court improperly includes amounts in assessed court costs, the proper appellate remedy is to reform the judgment to delete the improper fees. ***Cates v. State***, 402 S.W.3d 250, 252 (Tex. Crim. App. 2013). Court costs may not be assessed against a criminal defendant for which a cost is not expressly provided by law. *See* TEX. CODE CRIM. PROC. ANN. art. 103.002 (West 2018).

Local Consolidated Fee on Conviction of a Felony

The date of Appellant's charged offense is December 23, 2019. The Local Consolidated Fee on Conviction of Felony only applies to defendants who are convicted of offenses committed on or after January 1, 2020. TEX. LOC. GOV'T CODE ANN. § 134.101 (West 2021). Section 134.101 assesses an additional $105.00 fee for persons convicted of felonies. ***Id.*** § 134.101(a). That $105.00 fee is to be allocated to the following specific accounts and funds: the clerk of the court account, the county records management and preservation fund, the county jury fund, the courthouse security fund, the county and district court technology fund, and the county specialty court account. ***Id.*** § 134.101(b).

The bill of costs in Appellant's case includes the following costs as enumerated in Section 134.101: $40.00 for the clerk of the court, $4.00 for the county and district court technology fund, $1.00 for the county jury fund, $25.00 for the county records management and preservation, $25.00 for the county specialty court account, and $10.00 for the courthouse security fund. These fees total $105.00. Pursuant to the statute's effective date, Appellant is not obligated to pay the Local Consolidated Fee on Conviction of Felony. *See* ***Hayes v. State***, No. 12-20-00222-CR, 2021 WL 1418400, at *2 (Tex. App.—Tyler April 14, 2021, no pet.) (mem. op., not designated for publication). We sustain this portion of Appellant's fourth issue.

Specialty Court Account

Appellant asserts that he should not have been charged the "county specialty court account" fee because it does not apply to his offense. Before June 2019, Article 102.178(g) of

the Texas Code of Criminal Procedure provided that funds received from courts on conviction of an offense under Chapter 49 of the Texas Penal Code (intoxication offenses) or Chapter 481 of the Texas Health and Safety Code (controlled substances offenses) would be deposited to the credit of the drug court account to help fund drug court programs. *See* TEX. CODE CRIM. PROC. ANN. art. 102.0178(a), (g) (West 2018), *repealed by* Act of June 15, 2019, 86th Leg., R.S., ch. 1352, § 1.18, 2019 Tex. Gen. Laws 1352. In June 2019, the Legislature redesignated that account to the "county specialty court account" under Section 134.101(b)(6) of the Texas Local Government Code, *i.e.*, the Local Consolidated Fee on Conviction of Felony. *See* TEX. LOCAL GOV'T CODE ANN. § 134.101(b)(6). Because Appellant was not convicted of a drug or intoxication offense, the specialty court account fee does not apply to his case. This portion of Appellant's fourth issue is sustained.

Judicial Support Fees and Record Management Fees

The Bill of Costs in this case also includes the following fees: $0.60 for the "Judicial Support Fee – (County)," $5.40 for the "Judicial Support Fee – (State)," and $25.00 for the "Records Management & Preservation Fee." These costs were authorized under former Section 133.105 of the Texas Local Government Code and Article 102.005 of the Texas Code of Criminal Procedure. *See* TEX. LOC. GOV'T CODE ANN. § 133.105(a) (West 2019), *repealed by* Act of May 23, 2019, 86th Leg., R.S., ch. 1352, § 1.19(12), 2019 Tex. Sess. Law Serv. 3982 (eff. Jan. 1, 2020); TEX. CODE CRIM. PROC. ANN. art. 102.005(f) (West 2018), *repealed by* Act of May 23, 2019, 86th Leg., R.S., ch. 1352, § 1.19(12), 2019 Tex. Sess. Law Serv. 3982 (eff. Jan. 1, 2020). During its 86th Regular Session, the Texas Legislature comprehensively revised the statutory array of criminal court costs and fees imposed on conviction (the Act). *See generally* Act of May 23, 2019, 86th Leg., R.S., ch. 1352, 2019 Tex. Sess. Law Serv. 3982 (eff. Jan. 1, 2020). Yet, "[e]xcept as otherwise provided by" the Act, "the changes in the law made by" the Act "apply only to a cost, fee, or fine on conviction for an offense committed on or after the effective date of" the Act, that is January 1, 2020. Act of May 23, 2019, 86th Leg., R.S., ch. 1352, § 5.01, 2019 Tex. Sess. Law Serv. 3982, 4035–36. An offense committed before the Act's effective date "is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose." ***Id***.

Here, Appellant argues that because Section 133.105 and Article 102.005 were repealed, the costs are inappropriately assessed. However, Appellant makes no reference to the savings

clause in his brief. *See* ***id.*** Because the offense in this case was alleged to have been committed on December 23, 2019, Section 133.105(a) and Article 102.005 apply. *See* ***id.*** Thus, we hold that these fees appropriately were assessed. *See* ***Hammontree v. State***, No. 12-21-00139-CR, 2022 WL 3012438, at *15 (Tex. App.—Tyler July 29, 2022, pet. ref'd) (mem. op., not designated for publication). This portion of Appellant's fourth issue is overruled.

Modification

As discussed above, Appellant was improperly assessed the local consolidated fee on conviction of a felony and the county specialty court account fee. Accordingly, we will modify the trial court's judgment, bill of costs, and Order to Withdraw Funds to delete these fees. *See* ***Sturdivant v. State***, 445 S.W.3d 435, 443 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd). Because the judicial support and record management fees were properly assessed, those fees remain intact.

DISPOSITION

Having sustained a portion of Appellant's fourth issue, we ***modify*** the trial court's judgment, bill of costs, and Order to Withdraw Funds to reflect that Appellant's costs are $171.50 by deleting the clerk of the court account, the county jury fund, the courthouse security fund, the county and district court technology fund, and the county specialty court account. Having overruled Appellant's first, second, and third issues, we ***affirm*** the judgment ***as modified***.

GREG NEELEY
Justice

Opinion delivered November 30, 2022.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

NOVEMBER 30, 2022

NO. 12-21-00231-CR

CHRISTOPHER RENOR EARL,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 7th District Court

of Smith County, Texas (Tr.Ct.No. 007-0505-20)

THIS CAUSE came to be heard on the appellate record and the briefs filed herein, and the same being considered, it is the opinion of this court that the judgment, bill of costs, and Order to Withdraw Funds of the court below should be modified and as modified, affirmed.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment, bill of costs, and Order to Withdraw Funds of the court below be **modified** to reflect that Appellant's costs are $171.50 by deleting the clerk of the court account, the county jury fund, the courthouse security fund, the county and district court technology fund, and the county specialty court account; in all other respects the judgment of the trial court is **affirmed**; and that this decision be certified to the court below for observance.

Greg Neeley, Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.