

**NOS. 12-22-00153-CR
12-22-00154-CR
12-22-00155-CR
12-22-00156-CR
12-22-00157-CR
12-22-00158-CR
12-22-00159-CR
12-22-00160-CR**

**IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS**

ERNESTO JOEL CASTELLON, § *APPEALS FROM THE 114TH*
APPELLANT

V. § *JUDICIAL DISTRICT COURT*

THE STATE OF TEXAS, § *SMITH COUNTY, TEXAS*
APPELLEE

MEMORANDUM OPINION

Ernesto Joel Castellon appeals his convictions for possession of a controlled substance with intent to deliver, aggravated assault against a public servant with a deadly weapon, theft of a firearm, evading arrest or detention with a vehicle, and possession of a prohibited weapon. In his sole issue, Appellant argues that the imposition of court costs in trial court cause numbers 114-1474-21, 114-1476-21, 114-1477-21, 114-1478-21, 114-1479-21, 114-1480-21, and 114-1481-21 is improper. We modify and affirm as modified.

BACKGROUND

Appellant was charged by indictment with (1) possession of a controlled substance with intent to deliver, namely, lysergic acid diethylamide (LSD), a first degree felony¹ (trial court cause number 114-1474-21); (2) aggravated assault against a public servant with a deadly weapon, a first degree felony² (trial court cause number 114-1475-21); (3) theft of a firearm, a state jail felony³ (trial court cause number 114-1476-21); (4) evading arrest or detention with a vehicle, a third degree felony⁴ (trial court cause number 114-1477-21); (5) possession of a controlled substance with intent to deliver, namely, cocaine, a first degree felony⁵ (trial court cause number 114-1478-21); (6) possession of a controlled substance with intent to deliver, namely, methylenedioxy methamphetamine (MDMA), a second degree felony⁶ (trial court cause number 114-1479-21); (7) possession of a controlled substance with intent to deliver, namely, tetrahydrocannabinol, a first degree felony⁷ (trial court cause number 114-1480-21); and (8) possession of a prohibited weapon, a third degree felony⁸ (trial court cause number 114-1481-21).

Appellant entered an “open” plea of “guilty” to all the charged offenses in a single criminal action. Appellant and his counsel signed various documents in connection with his guilty pleas, including an agreed punishment recommendation, and a stipulation of evidence in which he stipulated, and judicially confessed, that each and every allegation in the indictments was true and correct, and constituted the evidence in the cases. In a single punishment hearing, the trial court found Appellant to be “guilty” of all eight offenses.

The trial court assessed punishment at (1) life imprisonment in trial court cause numbers 114-1474-21, 114-1475-21, 114-1478-21, and 114-1480-21; (2) twelve months in a state jail

¹ See TEX. HEALTH & SAFETY CODE ANN. § 481.1121(b)(3) (West 2017).

² See TEX. PENAL CODE ANN. § 22.02(b)(2)(B) (West Supp. 2022).

³ See *id.* § 31.03(e)(4)(C) (West 2019).

⁴ See *id.* § 38.04(b)(2)(A) (West 2016).

⁵ See TEX. HEALTH & SAFETY CODE ANN. § 481.112(d) (West 2017).

⁶ See *id.* § 481.113(c) (West 2017).

⁷ See *id.* § 481.113(d) (West 2017).

⁸ See TEX. PENAL CODE ANN. § 46.05(e) (West Supp. 2022).

facility in trial court cause number 114-1476-21; (3) ten years of imprisonment in trial court cause numbers 114-1477-21 and 114-1481-21; and (4) fifteen years of imprisonment in trial court cause number 114-1479-21.

The trial court also ordered Appellant to pay court costs for each case and ordered that the sentences would be served concurrently. These appeals followed.

DUPPLICATIVE COURT COST ASSESSMENT

In his sole issue, Appellant argues that the imposition of courts costs for trial court cause numbers 114-1474-21, 114-1476-21, 114-1477-21, 114-1478-21, 114-1479-21, 114-1480-21, and 114-1481-21 is improper. The State concedes this error.

The Texas Code of Criminal Procedure provides as follows:

- (a) In a single criminal action in which a defendant is convicted of two or more offenses or of multiple counts of the same offense, the court may assess each court cost or fee only once against the defendant.
- (b) In a criminal action described by Subsection (a), each court cost or fee the amount of which is determined according to the category of offense must be assessed using the highest category of offense that is possible based on the defendant's convictions.

See TEX. CODE CRIM. PROC. ANN. art. 102.073 (a), (b) (West 2018). In this context, we construe the phrase “[i]n a single criminal action” to mean in a single trial or plea proceeding. *Hurlburt v. State*, 506 S.W.3d 199, 203 (Tex. App.—Waco 2016, no pet.).

The record in this case shows that the allegations and evidence of all eight offenses were presented in a single plea proceeding, or “criminal action.” *See id.* Therefore, the trial court was authorized to assess each court cost and fee only once against Appellant. *See* TEX. CODE CRIM. PROC. ANN. art. 102.073 (a). However, the judgments in (1) trial court cause number 114-1474-21 (appellate cause number 12-22-00153-CR) shows a court cost assessment of \$249.00; (2) trial court cause number 114-1475-21 (appellate cause number 12-22-00154-CR) shows a court cost assessment of \$251.50; (3) trial court cause number 114-1476-21 (appellate cause number 12-22-00155-CR) shows a court cost assessment of \$251.50; (4) trial court cause number 114-1477-21 (appellate cause number 12-22-00156-CR) shows a court cost assessment of \$251.50; (5) trial court cause number 114-1478-21 (appellate cause number 12-22-00157-CR) shows a court cost assessment of \$249.00; (6) trial court cause number 114-1479-21 (appellate cause number 12-22-

00158-CR) shows a court cost assessment of \$249.00; (7) trial court cause number 114-1480-21 (appellate cause number 12-22-00159-CR) shows a court cost assessment of \$249.00; and (8) trial court cause number 114-1481-21 (appellate cause number 12-22-00160-CR) shows a court cost assessment of \$251.50. We conclude that the trial court erred by assessing fees eight times against the Appellant. *See id.*

Further, Article 102.073(b) provides that costs must be assessed using the highest category of offense based on an appellant's convictions. *See id.* art. 102.073 (b). Here, four of Appellant's convictions were for a first degree felony offense. Where a defendant has multiple convictions for the same level of offense, the court should delete the costs in the case with the lower amount of costs assessed and retain the costs for the case with the highest amount assessed. *See Cain v. State*, 525 S.W.3d 728, 734 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd). Because trial court cause number 114-1475-21 is a first degree felony offense with the highest amount of costs assessed among the first degree felony offenses at \$251.50, we hold that the court costs should be assessed only in trial court cause number 114-1475-21 (appellate cause number 12-22-00154-CR).

Accordingly, we sustain Appellant's sole issue as to the duplicative costs assessed against him in trial court cause numbers 114-1474-21, 114-1476-21, 114-1477-21, 114-1478-21, 114-1479-21, 114-1480-21, and 114-1481-21. We have the authority to correct a trial court's judgment to make the record speak the truth when we have the necessary data and information. *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd). Because we have the necessary data and information to correct the amount of court costs in this case, we conclude that the judgment, the attached order to withdraw funds, and the bill of costs in trial court cause numbers 114-1474-21, 114-1476-21, 114-1477-21, 114-1478-21, 114-1479-21, 114-1480-21, and 114-1481-21 should be modified to remove the duplicated court costs. *See id.*; TEX. R. APP. P. 43.2(b).

DISPOSITION

Having sustained Appellant's sole issue, we *modify* the trial court's judgment, Order to Withdraw Funds, and bill of costs in the possession of a controlled substance with intent to deliver, namely, LSD, case, i.e., trial court cause number 114-1474-21 (appellate cause number 12-22-00153-CR) to reflect that the amount of court costs is \$0.00. *See* TEX. R. APP. P. 43.2(b).

In all other respects, we **affirm** the trial court's judgment in trial court cause number 114-1474-21 (appellate cause number 12-22-00153-CR) as modified.

We **modify** the trial court's judgment, Order to Withdraw Funds, and bill of costs in the theft of a firearm case, i.e., trial court cause number 114-1476-21 (appellate cause number 12-22-00155-CR) to reflect that the amount of court costs is \$0.00. *See id.* In all other respects, we **affirm** the trial court's judgment in trial court cause number 114-1476-21 (appellate cause number 12-22-00155-CR) as modified.

We **modify** the trial court's judgment, Order to Withdraw Funds, and bill of costs in the evading arrest or detention with a vehicle case, i.e., trial court cause number 114-1477-21 (appellate cause number 12-22-00156-CR) to reflect that the amount of court costs is \$0.00. *See id.* In all other respects, we **affirm** the trial court's judgment in trial court cause number 114-1477-21 (appellate cause number 12-22-00156-CR) as modified.

We **modify** the trial court's judgment, Order to Withdraw Funds, and bill of costs in the possession of a controlled substance with intent to deliver, namely, cocaine, case, i.e., trial court cause number 114-1478-21 (appellate cause number 12-22-00157-CR) to reflect that the amount of court costs is \$0.00. *See id.* In all other respects, we **affirm** the trial court's judgment in trial court cause number 114-1478-21 (appellate cause number 12-22-00157-CR) as modified.

We **modify** the trial court's judgment, Order to Withdraw Funds, and bill of costs in the possession of a controlled substance with intent to deliver, namely, MDMA, case, i.e., trial court cause number 114-1479-21 (appellate cause number 12-22-00158-CR) to reflect that the amount of court costs is \$0.00. *See id.* In all other respects, we **affirm** the trial court's judgment in trial court cause number 114-1479-21 (appellate cause number 12-22-00158-CR) as modified.

We **modify** the trial court's judgment, Order to Withdraw Funds, and bill of costs in the possession of a controlled substance with intent to deliver, namely, tetrahydrocannabinol, case, i.e., trial court cause number 114-1480-21 (appellate cause number 12-22-00159-CR) to reflect that the amount of court costs is \$0.00. *See id.* In all other respects, we **affirm** the trial court's judgment in trial court cause number 114-1480-21 (appellate cause number 12-22-00159-CR) as modified.

We **modify** the trial court's judgment, Order to Withdraw Funds, and bill of costs in the possession of a prohibited weapon, i.e., trial court cause number 114-1481-21 (appellate cause number 12-22-00160-CR) to reflect that the amount of court costs is \$0.00. *See id.* In all other

respects, we *affirm* the trial court's judgment in trial court cause number 114-1481-21 (appellate cause number 12-22-00160-CR) as modified.

We *affirm* the trial court's judgment in the aggravated assault of a public service with a deadly weapon case (trial court cause number 114-1475-21, appellate cause number 12-22-00154-CR).

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. 12-22-00153-CR

ERNESTO JOEL CASTELLON,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1474-21)

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, Order to Withdraw Funds, and bill of costs of the court below should be modified and as modified, affirmed.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment, Order to Withdraw Funds, and bill of costs of the court below be **modified** to reflect that the amount of court costs is \$0.00; 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.



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

NOVEMBER 30, 2022

NO. 12-22-00154-CR

ERNESTO JOEL CASTELLON,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1475-21)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things 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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

NOVEMBER 30, 2022

NO. 12-22-00155-CR

ERNESTO JOEL CASTELLON,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1476-21)

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, Order to Withdraw Funds, and bill of costs of the court below should be modified and as modified, affirmed.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment, Order to Withdraw Funds, and bill of costs of the court below be **modified** to reflect that the amount of court costs is \$0.00; 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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

NOVEMBER 30, 2022

NO. 12-22-00156-CR

ERNESTO JOEL CASTELLON,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1477-21)

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, Order to Withdraw Funds, and bill of costs of the court below should be modified and as modified, affirmed.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment, Order to Withdraw Funds, and bill of costs of the court below be **modified** to reflect that the amount of court costs is \$0.00; 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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

NOVEMBER 30, 2022

NO. 12-22-00157-CR

ERNESTO JOEL CASTELLON,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1478-21)

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, Order to Withdraw Funds, and bill of costs of the court below should be modified and as modified, affirmed.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment, Order to Withdraw Funds, and bill of costs of the court below be **modified** to reflect that the amount of court costs is \$0.00; 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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

NOVEMBER 30, 2022

NO. 12-22-00158-CR

ERNESTO JOEL CASTELLON,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1479-21)

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, Order to Withdraw Funds, and bill of costs of the court below should be modified and as modified, affirmed.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment, Order to Withdraw Funds, and bill of costs of the court below be **modified** to reflect that the amount of court costs is \$0.00; 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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

NOVEMBER 30, 2022

NO. 12-22-00159-CR

ERNESTO JOEL CASTELLON,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1480-21)

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, Order to Withdraw Funds, and bill of costs of the court below should be modified and as modified, affirmed.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment, Order to Withdraw Funds, and bill of costs of the court below be **modified** to reflect that the amount of court costs is \$0.00; 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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

NOVEMBER 30, 2022

NO. 12-22-00160-CR

ERNESTO JOEL CASTELLON,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1481-21)

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, Order to Withdraw Funds, and bill of costs of the court below should be modified and as modified, affirmed.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment, Order to Withdraw Funds, and bill of costs of the court below be **modified** to reflect that the amount of court costs is \$0.00; 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.