

**Affirm and Opinion Filed July 20, 2020**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**05-19-00552-CR**

**05-19-00553-CR**

**05-19-00554-CR**

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**ALONZO HAMLETT, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 292nd Judicial District Court  
Dallas County, Texas  
Trial Court Cause Nos. F15-70453-V, F15-70454-V, F15-72051-V**

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**MEMORANDUM OPINION**

Before Justices Bridges, Molberg, and Carlyle  
Opinion by Justice Molberg

Appellant Alonzo Hamlett appeals three judgments entered after he pleaded true in an open plea hearing to the State's motions to revoke probation and adjudicate guilt on March 21, 2019.<sup>1</sup> As we explain below, we modify the judgments to remove duplicative court costs in causes F15-70454-V and F15-72051-V but affirm the judgments in all other respects.

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<sup>1</sup> The trial court addressed the State's motions in cause numbers F10-41379-V, F15-70453-V, F15-70454-V, and F15-72051-V in the March 21, 2019 hearing. Only the latter three cases are involved in this appeal.

## **I. Background**

In 2016, Hamlett was indicted, entered pleas of guilty, and was placed on deferred adjudication community supervision for a period of three years in cause numbers F15-70453-V (aggravated assault with a deadly weapon), F15-70454-V (injury to a child), and F15-72051-V (family violence assault by impeding breath or strangulation).

On February 6, 2019, the State filed motions to revoke probation or proceed with an adjudication of guilt in all three cases, alleging Hamlett had violated the conditions of his community supervision by testing positive for THC on two occasions, failing to report to the community supervision office in December of 2018 or January of 2019, not paying court costs and fines, not completing a domestic violence program, and failing to pay restitution.

On March 21, 2019, in a single proceeding, Hamlett entered open pleas of true to the State's allegations. The State offered, and the court admitted, Hamlett's signed pleas of true and stipulations of evidence in each case.

Hamlett's attorney called two witnesses: Hamlett's mother, Vicky Lynn Hudson-Hamlett, and Hamlett. The trial court then asked Hamlett various questions.

After both sides rested and argued, the trial court found that Hamlett had violated the terms and conditions of community supervision as the State alleged. The court assessed punishment at 180 days confinement in the Texas Department of Criminal Justice's (TDCJ's) state jail division in case number F15-70454-V and five

years' confinement in TDCJ's institutional division in case numbers F15-70453-V and F15-72051-V. The trial court ordered all of the sentences to run concurrently, with credit for time served. Each judgment also ordered Hamlett to pay \$299 in court costs. The court certified Hamlett's right to appeal, and he timely appealed. *See* TEX. R. APP. P. 9.2(b), 26.2(a)(1).

## **II. Analysis**

Hamlett presents three issues, the first of which is undisputed by the State. We address each issue below but consider his second and third issues together.

### **A. Duplicative Court Costs**

In his first issue, Hamlett argues, and the State agrees, that we should modify the judgments in F15-70454-V and F15-72051-V to remove the assessment of duplicative court costs. We agree.

Article 102.073 of the code of criminal procedure provides that “[i]n a single criminal action in which a defendant is convicted of two or more offenses . . . the court may assess each court cost or fee only once against the defendant” using “the highest category of offense that is possible based on the defendant’s convictions.” *See* TEX. CODE CRIM. PROC. art. 102.073(a)–(b). Here, all three offenses were decided in a single criminal proceeding and thus fall within a single criminal action. *See Rubio v. State*, Nos. 05-17-00621-CR, 05-17-00622-CR, 2018 WL 3424362, at \*3 (Tex. App.—Dallas July 16, 2018, pet. ref’d) (mem. op., not designated for publication) (citing *Callaway v. State*, Nos. 05-95-01824-CR, 05-95-01825-CR,

1997 WL 472333, at \*2 (Tex. App.—Dallas Aug. 20, 1997, no pet.) (mem. op., not designated for publication)). Thus, court costs should have only been assessed in Hamlett’s aggravated assault case (F15-70453-V), the highest category of the offenses at issue here. *See* TEX. CODE CRIM. PROC. art. 102.073(a)–(b).

When a judgment includes improperly assessed court costs, we may reform the judgment to delete the improper fees. *Rubio*, 2018 WL 3424362, at \*3 (citing *Robinson v. State*, 514 S.W.3d 816, 828 (Tex. App.—Houston [1st Dist.] 2017, pet. ref’d). Thus, we sustain Hamlett’s first issue, conclude that the trial court improperly assessed court costs in F15-70454-V and F15-72051-V, and modify the judgments in those two cases to delete those costs because they duplicate the costs already assessed in F15-70453-V. *See* TEX. CODE CRIM. PROC. art. 102.073(a)–(b); *Rubio*, 2018 WL 3424362, at \*3.

## **B. Due Process and Due Course of Law**

In his second and third issues, Hamlett argues the trial court abandoned its role as a neutral arbiter and thereby violated his rights to due process and due course of law under the federal and state constitutions. *See* U.S. CONST. amend XIV; TEX. CONST. art. I, § 19. To support his assertion, Hamlett points to various exchanges in the reporter’s record, which we include below.

### **1. Standard of Review and Applicable Law**

Although Hamlett did not object to the court’s questioning below, he argues he may challenge the court’s questioning on appeal by demonstrating fundamental error. We assume, but do not decide, that Hamlett may do so. *See Nelson v. State*, No. 05-18-00938-CR, 2019 WL 2121051, at \*2 (Tex. App.—Dallas May 15, 2019, no pet.) (mem. op., not designated for publication) (assuming defendant was not required to object to a trial judge’s questions to raise a complaint on appeal, in light of *Proenza v. State*, 541 S.W.3d 786, 788–89 (Tex. Crim. App. 2017)).

A defendant has a due process right to a fair trial in a fair tribunal. *In re Murchison*, 349 U.S. 133, 136 (1955); *see also* U.S. CONST. amend. XIV; TEX. CONST. art. I, § 19. Due process requires that a criminal trial be held before a neutral and detached hearing body or officer. *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973); *Brumit v. State*, 206 S.W.3d 639, 645 (Tex. Crim. App. 2006). This right applies not only to trials but also to probation revocation hearings. *Taylor v. State*, Nos. 05-13-01369-CR, 05-13-01370-CR, 2014 WL 7476393, at \*3, n.3 (Tex. App.—Dallas Dec. 30, 2014, no pet.) (not designated for publication) (citing *Gagnon*, 411 U.S. at 786; *Brumit*, 206 S.W.3d at 645; *Wright v. State*, 640 S.W.2d 265, 269 (Tex. Crim. App. [Panel Op.] 1982)).

A “neutral and detached” judge is not synonymous with a silent observer. *Marshall v. State*, 297 S.W.2d 135, 136–37 (Tex. Crim. App. 1956). A trial judge may question a witness to obtain information or clarify a point. *See Brewer v. State*, 572 S.W.2d 719, 721 (Tex. Crim. App. [Panel Op.] 1978); *Williams v. State*, 89

S.W.3d 325, 328 (Tex. App.—Texarkana 2002, pet. ref'd); *Moreno v. State*, 900 S.W.2d 357, 359 (Tex. App.—Texarkana 1995, no pet.). However, in doing so, the trial court must not go beyond permissible questioning by (1) conveying its opinion of the case to the jury and ultimately influencing their decision, or (2) in the zeal of active participation, becoming an advocate in the adversarial process and losing the neutral and detached role required for the factfinder and judge. *Nelson*, 2019 WL 2121051, at \*2 (citing *Moreno*, 900 S.W.2d at 359). Because Hamlett entered an open plea of guilty and requested the trial court assess punishment, there was no danger of the trial court's questions influencing a jury. Therefore, only the second consideration is implicated.

In a bench trial, a trial court has more latitude than in a jury trial to question witnesses to obtain information to assist in the fact-finding process. *Nelson*, 2019 WL 2121051, at \*4 (citing *Moreno*, 900 S.W.2d at 359–60). Although not favored, even extensive and adversarial questioning by a trial court is permissible in a bench trial so long as the questions are relevant to the issues before the court and the court's impartiality is not affected. *Nelson*, 2019 WL 2121051, at \*4 (citing *Guin v. State*, 209 S.W.3d 682, 686–87 (Tex. App.—Texarkana 2006, no pet.)).

In the absence of a clear showing of bias, we presume that a judge was neutral and detached. *Taylor*, 2014 WL 7476393, at \*3 n.5 (citing *Jaenicke v. State*, 109 S.W.3d 793, 796 (Tex. App.—Houston [1st Dist.] 2003, pet ref'd)); see *Nelson*, 2019 WL 2121051, at \*3. “Judicial remarks during the course of a trial that are critical or

disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge” but “will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). We review the entire record to determine whether a clear showing of bias has been made. *Taylor*, 2014 WL 7476393, at \*3 n.3 (citations omitted).

## **2. Application of Law to Facts**

Before we turn to the particular exchanges about which Hamlett complains, it is helpful to outline the context in which these exchanges arose. As we indicated, Hamlett’s mother and Hamlett both testified in the hearing. Both asked the trial court to give Hamlett another chance, and Hamlett’s mother asked for mercy and leniency for her son.

In her direct-examination, when asked where Hamlett would stay if the court gave Hamlett a last chance on probation, Hamlett’s mother answered, “He could – he stays with me.” She then testified, “But then he goes and stays with Yesenia<sup>[2]</sup> from time to time. . . . They’ll have an altercation and then he’s back. And then they’ll make up, you know, and then he’s back.” She testified that Hamlett has been

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<sup>2</sup> Hamlett testified he lives in one household with Yesenia and up to eight children. At various points in the record, Hamlett testified he and Yesenia “have three children together,” but also stated that he is a biological father to two children. Hamlett testified the other children are his step-children and are Yesenia’s children from prior relationships.

a “good son” to her and has been helpful to her when he stays with her, and she described him as a “good father.”

Among other allegations, Hamlett pleaded true to the State’s allegation that he failed to report to his probation officer in December 2018 and January 2019. Hamlett and his mother both testified that Hamlett quit reporting after he received a “Class C ticket with Yesenia, back in December.”

Unlike his mother, who had testified that Hamlett “stays with” her, Hamlett testified about living in a household with Yesenia and eight children. He testified that Yesenia worked and he took care of the children, much like a “househusband”—a description his lawyer used and with which he agreed. Hamlett testified if the court would give him “this one last chance,” he would “take full advantage to better myself and be a better person for my family, a better person to society.” His lawyer concluded direct-examination by asking, “What’s going to make you change in the future, if [the] Judge gives you another chance?” Hamlett answered, “This time I won’t be trying. I’ll be doing.”

During cross-examination, Hamlett responded to questions about his use of marijuana and testified he smoked marijuana while the children were at school. He also responded to his questions about his spotty work history, particularly in the eight years before pursuing work on an ice cream truck with Yesenia, and he stated, “I wasn’t focused. I wasn’t doing what I was supposed to do. I was being lazy. I was slacking.” When asked why he deserved another chance, he stated, “Like I said, I

won't be trying this time.” His cross-examination ended with his acknowledgment that, based on his track record, his word meant next to nothing.

After both sides' counsel indicated they had no further questions for Hamlett, the court then began an exchange with Hamlett that took up approximately four pages in the forty-one page reporter's record, beginning with a question to Hamlett asking, “What else do you have to say?” In response, Hamlett told the trial judge, “If you were to grant me probation, you won't see me again unless it's on some kind of positive note.” He also stated, “I won't be able to take care of my family. . . . [or] raise them right. Like I say, I've raised her kids and mine all together as one – as one unit.”

The court then asked Hamlett about his living situation, noting that Hamlett's mother seemed to say Hamlett lived with her sometimes and sometimes with Yesenia, and the court asked whether he lived there full-time or if his mother is confused. Hamlett stated, “When things get heated, we have to have our space.” The court asked how often things get heated, and Hamlett answered, “Not often.” The court then engaged in the following exchange:

THE COURT: What's the deal with the Class C ticket with Yesenia?

HAMLETT: We had an argument.

THE COURT: What does that mean?

HAMLETT'S COUNSEL: Tell the Judge what happened and who called the police and what happened.

HAMLETT: Oh, she called the police, I didn't – I didn't know that – that she called the police. I didn't, like – I left, like –

THE COURT: What happened? She didn't just call the police for nothing.

HAMLETT: I – as I remember, we had an argument, nothing physical. And I remember – I remember leaving with the keys and – oh, we had an argument over – over the keys to the vehicle and that's why she was calling the police.

THE COURT: Well, what happened? So you're saying that y'all – you had an argument and then she called the police, that's it?

HAMLETT: That's part of my – like, I didn't know about the – her calling the police until afterwards.

THE COURT: I'm not asking about the call to the police. What I'm saying is what happened before that? You're saying that you got – what was the argument? Was it yelling? Did you make a threat?

HAMLETT: No. We just argued. She didn't want me to leave. Like, she thought that I was trying to go see other – another female and that wasn't the case. I just wanted to get away.

THE COURT: So was it about another female or was it about the truck or the car?

HAMLETT: No, like she didn't want me to leave because she – she thinks I been cheating because I was on Facebook and, like – I guess, like, a female had sent me messages, but I didn't respond and she thought that I deleted the messages, but I didn't. And it was an argument over that.

THE COURT: But what lead her to call the police?

HAMLETT: Because I was taking her – taking the truck.

THE COURT: And you said you didn't know that she called the police?

HAMLETT: No, I didn't.

THE COURT: Well, why didn't you report in January and February?

HAMLETT: Well, after she told me, then I was -- I was scared.

THE COURT: So – so she called the police, you said you didn't know, January, February, you don't report because she told you at some other point that she had called the police?

HAMLETT: Yes.

THE COURT: And then you decided you're not going to do probation?

HAMLETT: I was scared. I was nervous.

THE COURT: Whatever the reason, that's what you decided?

HAMLETT: Yes, sir. I didn't –

THE COURT: Did they go get you or did you report?

HAMLETT: They got me. And may I speak?

....

HAMLETT: What I was going to say was, like, when we have our arguments, like, yes, it gets heated, but I love her, like, to the bottom of my heart and I – I need her, she needs me. Like, we – we argue, we fuss, but we never fight each other. Like, she doesn't put her hands on me, I don't put my hands on her. Like, we don't have physical altercations. Our kids – even when we argue, our kids are never around.

THE COURT: You've never put your hands on her, according to what you told me last week, right?

HAMLETT: That's what I just said.

THE COURT: Ever?

HAMLETT: On Yesenia?

THE COURT: Yeah. What about the other women, the TV and all that?

HAMLETT: Yes, I pled guilty to those charges.

THE COURT: I know you pled guilty, you stood right in front of me and did that. I'm asking you just did you do it? That's tough, isn't it?

I don't know why that's such a tough question. Okay. You know it doesn't matter. It doesn't matter.

The court then asked whether either side any other questions for Hamlett, based on what the court had asked. Neither side's counsel asked other questions, and both sides presented arguments. The court then granted the State's motion and sentenced Hamlett.

Hamlett argues that the trial court's questioning as detailed above violated his due process and due course of law protections under the federal and state constitutions. *See* U.S. CONST. amend XIV; TEX. CONST. art. I, § 19. Specifically, Hamlett maintains that, with its questioning, the trial court "engaged in an extensive cross-examination . . . in order to conduct its own investigation into a matter not alleged in the State's motion to revoke probation" and that "the verbiage used . . . demonstrates the court's inability to remain neutral and impartial" and that the court's questioning indicated an "adversarial stance" against Hamlett.

We disagree. Based on this record, it is clear to us that the trial judge was attempting to clarify and understand certain discrepancies in the witnesses' testimony and the explanation the witnesses provided regarding Hamlett's failure to report. The trial court's questioning of Hamlett here did not demonstrate bias against him or show that the trial court became an advocate for the State or became so entangled in the role of an advocate that it lost its ability to remain neutral and detached, and no fundamental error has been shown. *See Nelson v. State*, No. 05-

18-00938-CR, 2019 WL 2121051, at \*3–4 (Tex. App.—Dallas May 15, 2019, no pet.) (mem. op., not designated for publication) (citing *Brumit*, 206 S.W.3d at 645; *Moreno v. State*, 900 S.W.2d 357, 359–60 (Tex. App.—Texarkana 1995, no pet.)); *Taylor*, 2011 WL 6144919, at \*2 (citing *Moreno*, 900 S.W.2d at 359–60). We overrule Hamlett’s second and third issues.

### CONCLUSION

We affirm the court’s judgment in case number F-1570453-V. We modify each judgment in case numbers F-1570454 and F-1572051-V by deleting the assessment of \$299 in court costs, and as so modified, we affirm those judgments.

/Ken Molberg/  
KEN MOLBERG  
JUSTICE

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TEX. R. APP. P. 47.2

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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

ALONZO HAMLETT, Appellant

No. 05-19-00552-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. F15-70453.

Opinion delivered by Justice  
Molberg. Justices Bridges and  
Carlyle participating.

Based on the Court's opinion of this date, the judgment of the trial court is  
**AFFIRMED.**

Judgment entered this 20<sup>th</sup> day of July, 2020.



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

ALONZO HAMLETT, Appellant

No. 05-19-00553-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. F15-70454-V.  
Opinion delivered by Justice  
Molberg. Justices Bridges and  
Carlyle participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** by deleting the assessment of \$299 in court costs.

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 20<sup>th</sup> day of July, 2020.



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

ALONZO HAMLETT, Appellant

No. 05-19-00554-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. F15-72051-V.  
Opinion delivered by Justice  
Molberg. Justices Bridges and  
Carlyle participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** by deleting the assessment of \$299 in court costs.

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 20<sup>th</sup> day of July, 2020.