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FIRST COURT OF APPEALS
HOUSTON, TEXAS
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**No. 01-25-00299-CR**

In the
Court of Appeals
for the
First Judicial District of Texas
at Houston

**No. 1719712**
In the 228th District Court of
Harris County, Texas

**DAYTWON LITTLEJOHN**
*Appellant*
V.
**THE STATE OF TEXAS**
*Appellee*

# STATE'S APPELLATE BRIEF

**SEAN TEARE**
District Attorney
Harris County, Texas

**CHRIS CONRAD**
**HEATHER AXLINE**
**SHAWNTEL DINH**
Assistant District Attorneys

Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
Tel.: 713/274-5971

ORAL ARGUMENT NOT REQUESTED

## STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. P. 9.4(g) and TEX. R. APP. P. 39.1, the State does not request oral argument.

## IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.2(a)(1)(A), a complete list of the names of all interested parties is provided below.

Counsel for the State:

**Sean Teare** — District Attorney of Harris County

**Chris Conrad** — Assistant District Attorney on appeal

**Heather Axline** — Assistant District Attorney at trial

**Shawntel Dinh** — Assistant District Attorney at trial

**Dillan Passmore** — Assistant District Attorney at trial

Appellant or criminal defendant:

**Daytwon Littlejohn**

Counsel for Appellant:

**Murray Newman** — Attorney at trial

**Stephen Aslett** — Attorney on appeal

Trial Judge:

**Hon. Caroline Dozier**

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## STATEMENT OF THE CASE

Appellant was charged with the offense of murder (CR 46). Upon the request of his counsel, he underwent a competency evaluation and was determined to be competent (CR 215-223). On April 4, 2025, appellant entered a plea of not guilty, and his case proceeded to jury trial (3RR 40, 44). After hearing the evidence, the jury found appellant guilty of murder and sentenced him to 18 years in prison (CR 394; 7RR 7; 9RR 51). The court certified appellant's right to appeal, and appellant filed a timely notice of appeal (CR 398-401).

## STATEMENT OF FACTS

On April 16, 2021, appellant followed Jerry Bradley—the complainant—as the complainant drove to work (4RR 186; 5RR 110-12). Appellant and the complainant were neighbors, and appellant was in the process of being evicted from his apartment because the complainant and a few other neighbors had filed complaints against him (4RR 115-16, 123, 126). That morning, appellant drove his vehicle parallel to the complainants' vehicle and fired his Draco semiautomatic pistol nine times at the complainant (5RR 26-28, 123). One of the shots traveled through the complainant's passenger side door and struck the complainant in his lower abdomen (4RR 32-24, 44). Appellant then drove off and the complainant exited his vehicle and lay down in the roadway several feet from his car (3RR 61-62).

Two men stopped to help complainant as he lay bleeding in the road (3RR 55, 71). The complainant told both men that his neighbor shot him (3RR 56, 73). A small .25 caliber Raven pistol was found in the complainant's pocket while he was being treated for his injuries (4RR 11). The complainant was transported to the hospital but died later that day as a result of his injuries (4RR 34, 148).

The following day, Officer Jerry Smith observed appellant speeding in Montgomery County and attempted to initiate a traffic stop (7RR 40-41). Officer Smith activated his lights and sirens and attempted to detain appellant, but he continued driving at a high rate of speed (7RR 4). Police were finally able to detain appellant after a high-speed chase that lasted almost 50 miles (7RR 41, 47). Police found a black Draco pistol, another pistol, and spent 9-millimeter shell casings in appellant's vehicle (4RR 134-35). Subsequent testing confirmed that the shell casings in the vehicle and the bullet located in the complainant's abdomen were fired from the black Draco pistol found in appellant's possession the day after the murder (5RR 26-28, 38-40; State's Ex. 60; State's Ex. 94).

At trial, appellant admitted that he killed the complainant but claimed that he had acted in self-defense. Appellant told the jury that he pulled up next to the complainant because he needed to make a left turn into a gas station and when he rolled down his window to signal to the complainant, he saw the complainant point a gun at him (5RR 121). Appellant testified that he fired 9 or 10 shots at the complainant "until the gun was noticeably out of his hands" and then drove away (5RR 123). Appellant

admitted driving recklessly and fleeing from the Montgomery police (5RR 126). He also acknowledged that he did not tell the police that he killed the complainant in self-defense (5RR 127). At the conclusion of the trial, the jury implicitly rejected appellant's self-defense claim and found him guilty of murder (7RR 7).

During the punishment phase, the State presented a large amount of evidence about appellant's infractions inside the Harris County Jail (State's Ex. 100). This included, among other things, evidence that appellant had thrown liquefied feces on guards on three separate occasions, had assaulted guards and other prisoners, and had publicly masturbated in front of female guards on multiple occasions (7RR 64-67, 88, 97-99, 139, 144). After Detention Officer Davis—one of the female guards—testified that appellant had masturbated in front of her and then thrown liquefied feces on her after she threatened to report his behavior, a clerk in the court told the judge that she had observed appellant masturbating during the testimony (7RR 108). Appellant denied the accusation and the judge and defense attorney both noted on the record that they had not observed the alleged act (7RR 108-109). The jury also did not observe the alleged act and the State elected not to call the clerk to testify (7RR 110). The State did question appellant about masturbating during the trial, but he denied it (8RR 65).

Based on the clerk's masturbation allegation, appellant's trial counsel requested that he receive another competency evaluation (7RR 110). The judge noted that appellant had already received a competency evaluation and said she felt comfortable proceeding without a competency evaluation (7RR 108-112). She then asked appellant

if he was okay and appellant said he was not based on people lying on the stand (7RR 111). He noted that his life was in jeopardy and expressed his displeasure in being accused of masturbating during his trial (7RR 111). Appellant then said, "[n]ow, all of sudden, the allegation - - this lady, Ms. Davis, put a voodoo in my food and voodoo in my blood and lying, steady lying like somebody trying to jackoff on her. And now, all of a sudden, this allegation come of me jacking off." (7RR 111). Appellant's counsel then advised him not to talk further on the record and appellant responded, "I will respect your courtroom, Your Honor." (7RR 111). Appellant's counsel then again requested a competency evaluation for appellant based on his "voodoo" comments (7RR 112). The judge overruled counsel's request and stated that the trial would proceed (7RR 112).

A little while later, the parties had another conversation outside the presence of the jury. This time appellant's counsel indicated that he strongly believed it was against appellant's interest to testify during the punishment phase (8RR 20). Counsel asked appellant if he wished to ignore counsel's advice and testify (8RR 30). Appellant said that he would like to exercise his rights and speak on his behalf and raise concerns about the trial for purposes of appeal (8RR 30). In response, the judge said she would allow appellant to make a bill outside the presence of the jury to raise his concerns about the trial. Appellant responded, "That's perfect. That's perfect." (8RR 31-32). But he explained that he still wanted to testify about his good character and the extraneous offenses that had been proven by the State (8RR 31-32). He said that he understood

that the State could cross-examine him but said he wanted to respond to the State's suggestion that he was a "big, bad, scary guy." (8RR 33).

During his punishment phase testimony, appellant admitted to masturbating and throwing feces in jail but told the jury, "trust and believe me, that is mental health" (8RR 44). He explained that he was not the same man he was in the outside world because of being in 24-hour lockdown (8RR 44). Appellant emphasized to the jury that he was not a bad guy (8RR 46). Appellant acknowledged that he had committed most of the extraneous offenses that the State had alleged but provided explanations for his behavior (8RR 33-49). Appellant asked the jury to have a heart for him and show leniency when assessing his sentence (8RR 49). He ended by telling the jury that he thought about the murder every day and felt bad because the complainant was going through some of the same things that appellant struggled with (8RR 49).

During cross-examination, appellant denied masturbating in court (8RR 65). He also noted, "[y]ou have plenty people that witnessed nothing, and the lady that came through, she loves putting voodoo on inmates." (8RR 64). When the State referenced the fact that appellant had previously been found to be competent to testify as an example of why his extraneous offenses could not be explained by a mental health issue,

appellant responded, "[j]ust because I'm competent to stand trial doesn't mean I don't have mental abilities[1]." (8RR 64).

During closing argument, appellant's counsel noted that he had spoken with appellant almost every other day for the past 4 years and had observed appellant's mind deteriorate as a result of his solitary confinement (9RR 17-20). Counsel suggested that appellant's infractions in jail were the result of this mental deterioration and asked the jury not to sentence appellant to more than 24 years in prison (9RR 23). In response, the State told the jury appellant had disrespected the court by masturbating during his trial (9RR 29). Defense counsel objected that no evidence had been presented to support the State's allegation and the trial court sustained the objection (9RR 29). The State suggested that the jury start at 40 years and then add additional time for each of the feces incidents (9RR 40). The State ended by telling the jury that life was the only appropriate sentence (9RR 33).

While the jury was deliberating, the judge let appellant make a bill of exception (9RR 39). Appellant gave a long statement outlining the mistakes he believed that had been made in his trial in an attempt to preserve these issues for appellate review (9RR 39-46). In the process of making the bill, appellant gave an accurate description of the duties of each party involved in the trial and raised legal concerns including the

[1] Appellant referred to having "mental abilities" throughout trial and based on context, appears to have meant that he had mental health problems.

sufficiency of the evidence supporting the jury's guilty verdict, the judge's decision to admit the complainant's statements at the scene under the dying declaration hearsay exception, and the prosecutor's argument that appellant's description of the offense was inaccurate because the shooting occurred at a red light (9RR 39-46). Appellant also argued that his attorney had provided ineffective assistance of counsel because he had only visited appellant one time and because his "motion of the mind" (an apparent reference to counsel's attempt to prevent the complainant's dying declaration from being admitted into trial) went unheard (9RR 40). Appellant ended his bill by explaining, "I'm doing this for appellate so that they can see that my constitution have been violated, improper admission of evidence, hearsay and insufficient evidence so they can bring me back for appeal." (9RR 46).

After appellant had made his bill, the jury sent out a note asking for the portion of appellant's punishment testimony in which he said he felt bad about the shooting and thinks about it every day, to be read to them (9RR 49). After reviewing this testimony, the jury sentenced appellant to 18 years in prison; a number lower than the State or even the defense had requested (9RR 51).

## SUMMARY OF THE ARGUMENTS

The judge's decision not to conduct an informal competency hearing was reasonable given that appellant was found to be competent prior to trial and gave no indication during trial that he was unable to consult with his attorney or understand the proceedings against him. Further, even if an informal evaluation was required, the judge

satisfied this obligation by engaging with and observing appellant during the course of the trial.

## REPLY TO APPELLANT'S SOLE POINT OF ERROR

### I. Appellant has not met his burden to show that the trial judge abused his discretion by not conducting an informal competency inquiry.

#### *Standard of Review*

An appellate court reviews a complaint that the trial court erred in not conducting an informal competency inquiry for an abuse of discretion. *Moore v. State,* 999 S.W.2d 385, 393 (Tex. Crim. App. 1999); *Hobbs v. State*, 359 S.W.3d 919, 923-24 (Tex. App.—Houston [14th Dist.] 2012, no pet.). The reviewing court must examine the totality of the facts surrounding a trial court's implied decision not to hold the hearing. *Gray v. State*, 257 S.W.3d 825, 827 (Tex. App.—Texarkana 2008, pet. ref'd). The appellate court must not substitute its judgment for that of the trial court but rather determine whether the trial court's decision was arbitrary or unreasonable. *Id.* Finally, the trial judge's factual findings about the defendant's competency are entitled to "great deference" by a reviewing court. *See Lewis v. State*, 532 S.W.3d 423, 432 (Tex. App. — Houston [14th Dist.] 2016, pet. ref'd) (citing *McDaniel v. State*, 98 S.W.3d 704, 713 (Tex. Crim. App. 2003)).

#### *Applicable Law*

A criminal defendant who is incompetent may not be subjected to trial without violating his right to due process. *Turner v. State*, 422 S.W.3d 676, 688 (Tex. Crim. App.

2013); *Criswell v. State*, 278 S.W.3d 455, 457 (Tex. App.—Houston [14th Dist.] 2009, no pet.). In Texas, the legislature has developed a statutory scheme that provides a standard for determining competency. *Id.* at 689. A person is incompetent to stand trial if he does not have: (1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against him. TEX. CODE CRIM. PROC. ANN. art. 46B.003(a). A defendant is presumed competent to stand trial unless proved incompetent by a preponderance of the evidence. TEX. CODE CRIM. PROC. ANN. art. 46B.003(b).

On suggestion that the defendant may be incompetent to stand trial, the trial judge shall determine by "informal inquiry" whether there is some evidence from any source that would support a finding that the defendant may be incompetent to stand trial. TEX. CODE CRIM. PROC. ANN. art. 46B.004(c). Either party may suggest by motion, or the trial court may suggest on its own motion, that the defendant may be incompetent to stand trial. TEX. CODE CRIM. PROC. ANN. art. 46B.004(a). A suggestion of incompetency is the threshold requirement for an informal inquiry and may consist solely of a representation from any credible source that the defendant may be incompetent. TEX. CODE CRIM. PROC. ANN. art. 46B.004(c-1).

Evidence suggesting the need for an informal inquiry may be based on observations made in relation to the defendant's capacity to: (1) rationally understand the charges against him and the potential consequences of the pending criminal

proceeding; (2) disclose to counsel pertinent facts, events, and states of mind; (3) engage in a reasoned choice of legal strategies and options; (4) understand the adversarial nature of criminal proceedings; (5) exhibit appropriate courtroom behavior; and (6) testify. TEX. CODE CRIM. PROC. ANN. art. 46B.004(c-1); TEX. CODE CRIM. PROC. ANN. art. 46B.024(1). It may also be based on any evidence indicating that the defendant is incompetent within the meaning of article 46B.003. *Id.*

***Analysis***

Appellant argues that the trial court abused its discretion by not conducting an informal competency hearing based on appellant's disturbing behavior in the jail before trial, his alleged masturbation in court, his claim that a detention officer used "voodoo" on him and his rambling, irrational bill of exception. Appellant's claim is meritless because the trial judge reasonably determined that this information did not suggest that appellant was incompetent to stand trial.

**a. Competency evaluation**

Appellant argues that his competency evaluation did not obviate the need for an informal inquiry given that the examination occurred nearly six months before the trial (AB 24). Appellant claims that his pretrial competency "does not matter" because his competency at the trial is "all that matters" (AB 24). While appellant is correct that the relevant period of inquiry is the time of trial, his claim that his earlier competency evaluation "does not matter" is incorrect. While the court continues to have a duty to

conduct an informal competency hearing upon a suggestion that the defendant may be incompetent, nothing prohibits the court from viewing appellant's actions and behavior during the trial in context of his prior evaluation. Rather than being irrelevant, appellant's prior competency evaluation provided the trial court with a context through which to view appellant's actions and behavior during the trial. *See Gray*, 257 S.W.3d at 827 (the reviewing court must examine the totality of the facts surrounding a trial court's implied decision not to hold the hearing). Therefore, while the prior competency evaluation did not remove the judge's duty to conduct an informal competency evaluation upon a suggestion of appellant's incompetence, the prior evaluation remained relevant because it informed the judge's determination of whether appellant's actions at trial suggested incompetence.

Appellant suggest that his "disturbing behavior in jail" should have alerted the judge to a need for an informal competency evaluation. However, this evidence does not support appellant's claim because appellant had engaged in most of these acts—including masturbating in front of third parties and throwing feces at detention officers—before he was evaluated and deemed competent on October 17, 2024 (CR 217). For instance, Detention Officer Davis testified that on May 23, 2024, appellant told her that he was going to "jackoff to you and all the other female officers" and then threw liquefied feces on her after she said she was going to let the Sergeant know about his comments (7RR 93; State's Exhibits 102 and 103). She also testified that there were times that she walked by and appellant was "standing at the door with the pan hole

open actively jacking off." (7RR 97-98). Because appellant's interaction with Officer Davis occurred months before his competency evaluation, appellant's continuation of this behavior is not some evidence that should have suggested to the trial court that he was incompetent to stand trial (CR 215-23).

Appellant attempts to avoid this conclusion by noting that "[o]ver a dozen of [his] infractions occurred after Dr. Kearne had examined him." (AB 11). Appellant fails to identify any infraction that occurred after his examination that should have alerted the trial court to a deterioration of his mental status. More importantly, appellant's prior misbehavior while in jail is incapable of supporting his claim because, as he correctly notes in his brief, the relevant time that appellant must be competent is the time of his actual trial. *See Turner*, 422 S.W.3d at 689-91 (the relevant inquiry is whether appellant lacks present capacity to understand the proceedings against him and to consult with counsel to assist his defense); *Kostura v. State*, 292 S.W.3d 744, 747 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (the defendant's past history of mental illness and bizarre behavior did not mandate a competency inquiry absent doubt of his present ability to communicate or understand the proceedings). Consequently, appellant's behavior in jail prior to his trial did not obligate the judge to conduct an informal competency evaluation.

### b. Alleged masturbation during trial

Appellant's next argues that his alleged masturbation during trial and his references to "voodoo" qualified as a suggestion of his incompetency (AB 10-14). First, it should be noted that there is no evidence in the record showing that appellant actually masturbated during his trial. The clerk who allegedly saw appellant did not testify and the judge and defense counsel both stated on the record that they did not observe it and appellant categorically denied committing the act while under oath (7RR 108-109; 8RR 65). Further, as appellant's counsel noted, the jury did not become aware of appellant's alleged action (7RR 110). Therefore, there is no evidence in the record showing that appellant actually masturbated during his trial.

However, if the record did contain evidence establishing this allegation, it would still not constitute a suggestion that appellant was incompetent to stand trial. While the ability to display appropriate courtroom behavior is one factor a judge can consider when determining whether an informal competency hearing is required, disruptive courtroom behavior is not always probative evidence of incompetence to stand trial. *See George v. State*, 446 S.W.3d 490, 501 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd) (citing *Burks v. State*, 792 S.W.2d 835, 840 (Tex. App.—Houston [1st Dist.] 1990, pet. ref'd). "If such actions were probative of incompetence, one could effectively avoid criminal justice through immature behavior." *Id.* (*quoting Burks*, 792 S.W.2d at 840). This is especially true in appellant's case given that the record suggests that appellant had

already engaged in similar behavior—public masturbation in front of Officer Davis—prior to being found competent (7RR 97). Consequently, the trial court reasonably could have concluded that this act did not constitute a material change of circumstances that would suggest that his mental status had deteriorated.

Additionally, appellant's ability to hide his actions from the jury, the judge, and even his own attorney seated 3 feet from him show that he was able to conceal his inappropriate actions from the participants of the trial. This fact shows that even if the record contained a suggestion that appellant masturbated during his trial, he did so in a way that did not disrupt the proceedings. Additionally, appellant demonstrated that he possessed the ability to conduct himself properly throughout the rest of the trial. In fact, the trial court noted this very fact when she told appellant, "[y]ou've done a great job up until that allegation." (7RR 108). Consequently, appellant's alleged masturbation is not some evidence suggesting that he was unable to display appropriate courtroom behavior.

Alternatively, if the trial court believed that appellant had masturbated during his trial and believed that his obscene actions was inherently disruptive, the court could have reasonably concluded that appellant's inappropriate behavior was fueled not by a lack of rational understanding but by a desire to obstruct the trial proceeding. This interpretation would have been supported by appellant's history of public masturbation and his prior competency evaluation. In any case, the court could have reasonably concluded that appellant's disruptive and obscene conduct was simply not probative on

the issue of incompetence. *George v. State*, 446 S.W. 3d 490, 501 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd) ("[D]isruptive courtroom conduct and a general failure to cooperate are not probative of incompetence to stand trial."); *Johnson v. State*, 429 S.W.3d 13, 18 (Tex. App.—Houston [14th Dist.[ 2013, no pet.) ("Bizarre, obscene, or disruptive comments by a defendant during court proceedings do not necessarily constitute evidence supporting a finding of incompetency).

In summary, appellant's alleged act of masturbating during his trial did not constitute a suggestion that required the trial court to conduct an informal competency hearing because the act was not proven, was done discretely, was consistent with behavior appellant had engaged in before being found competent, and could reasonably have been viewed not as a sign of incompetence but as an attempt to disrupt the proceedings. Consequently, appellant's actions during trial did not constitute a suggestion that he may have been incompetent to stand trial.

**c. "Voodoo" comments**

Appellant next claims his comments about "voodoo" constituted a suggestion that he was not competent to stand trial. As noted previously, appellant first made reference to "voodoo" when he was accused by the clerk of masturbating during his trial. In a conversation outside of the jury's presence, appellant referenced the masturbation allegation and said, "Now, all of a sudden, the allegation - - this lady, Ms. Davis, put a voodoo in my food and voodoo in my blood and lying, steady lying like

somebody trying to jackoff on her." (7RR 111). Later, when the State was cross-examining him during the punishment phase about whether he masturbated during the trial, appellant said, "[t]hat is hearsay, and it's not true. You have plenty people that witnessed nothing; and the lady that came through, she loves putting voodoo on inmates." (8RR 65). Appellant argues that his reference to "voodoo" suggested that he was incompetent to stand trial and therefore required the trial court to conduct an informal competency evaluation.

Appellant's argument fails because appellant expressed similar paranoid thoughts about the jail staff during his competency evaluation but was nonetheless deemed to be competent to stand trial. Specifically, appellant told Dr. Philip Kerne—the person who conducted his competency evaluation—that he believed that the Sheriff Officers were "trying to make [him] go crazy." (CR 218). He said, he believed it was their job to "force inmates to be crazy" and told Dr. Kerne that he "hear[d] voices in medical" and believed that "somebody is doing something" (CR 218). Based on these comments, Dr. Kerne noted that he observed some evidence suggesting "suspicion and paranoia about Harris County Jail staff 'trying to make [appellant] go crazy.'" (CR 222). However, despite this evidence, Dr. Kerne concluded that appellant "demonstrated the capacity for a rational understanding of the current charges and proceedings, the capacity to disclose to counsel pertinent facts, events, and states of mind, engage in a reasoned choice of legal strategies and options, understand the adversarial nature of the criminal proceedings, exhibit appropriate courtroom behavior, and testify if there were

a need." (CR 223). Consequently, appellant's paranoid belief that Ms. Davis had put a "voodoo" in his food and blood did not constitute a suggestion that he was incompetent to stand trial.

This Court recently analyzed a similar fact pattern. In *Pleasant v. State*, the defendant in that case was deemed competent to stand trial before making bizarre comments during his trial. No. 01-23-00144-CR, 2024 WL 3350254 (Tex. App.—Houston [1st Dist.] July 9, 2024, pet. ref'd) (mem. op., not designated for pub.). During trial, the defendant in *Pleasant* claimed that he was "receiving messages from God through his cellular phone," "could speak with animals," and possessed "special powers after being struck by lightning." *Id.* at 10. This Court noted that the defendant had twice been evaluated and determined to be competent to stand trial despite reporting that he experienced auditory and visual hallucinations including religious hallucinations, claiming that he could speak with animals and discussing special powers he obtained after being struck by lightning. *Id.* at 6. This Court noted that the doctor determined that he was competent to stand trial because his delusional thoughts did not impair his ability to communicate or have reasonable discussions about the allegations or court proceedings. *Id.* Consequently, this Court concluded that, "the record contain[ed] no evidence that [the defendant's] mental health issues did not prevent him from having (1) a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, or (2) a rational as well as factual understanding of the proceedings against him." As a result, this Court held that the trial court in that case

did not abuse its discretion by not conducting an informal into the defendant's competency to stand trial. *Id.* at 10.

The same logic controls in appellant's case. The doctor that evaluated appellant was aware of his suspicion and paranoia about the jail staff when the doctor concluded that appellant was competent to stand trial. Furthermore, appellant's "voodoo" comments did not suggest that he was unable to consult with his attorney or understand the trial proceedings. Consequently, these comments did not constitute a suggestion that was incompetent to stand trial. Therefore, they did not trigger the judge's duty to conduct an informal competency inquiry.

**d. Bill of exception**

Finally, appellant argues that his "rambling, irrational bill of exception" should have alerted the judge to his potential incompetence (AB 16). Contrary to appellant's claim, the bill and the on-record discussions leading up to the bill actually demonstrates appellant's competency. First, appellant expressed valid reasons for wanting to make a bill of review; he wanted to preserve potential issues for appellate review (8RR 21). Second, appellant showed an ability to think strategically when he agreed not to raise his complaints about the trial in front of the jury but instead wait until after the punishment phase had concluded to raise his concerns in a bill of exception (8RR 30-32). Additionally, the discussion on the record about his desire to preserve issues for appellate review shows that appellant was consulting with counsel during the

proceeding (8RR 30-32). In fact, appellant confirmed that he understood his trial counsel's advice and that he understood that he his counsel thought testifying was a bad idea (8RR 30-32). He also confirmed that he understood that the State could cross-examine him if he opted to testify but explained that he still wanted to defend himself and that "[i]f it hurt [him] in punishment, it hurt [him] in punishment" (8RR 31-32). This conversation—which resulted in appellant making a bill of exception—demonstrated both appellant's ability to communicate with his attorney and his understanding of the trial proceedings. Thus, it demonstrated his competency to stand trial.

Likewise, appellant's bill of exception also demonstrated both of these qualities. During his lengthy bill, appellant correctly identified each participant in the trial, demonstrated through his testimony that he was familiar with their roles in the trial, and made coherent—if at times unfounded—complainants about their performance during the trial (8RR 35-46). While making his bill, appellant acknowledged that he had been convicted of murder, explained why he believed the trial had been unfair, and explained that he was making the bill to preserve these issues for appellate review. Consequently, rather than providing a suggestion of his incompetency, appellant's statements during the bill of exception demonstrate his competency to stand trial (8RR 35-46).

On appeal, appellant makes several arguments against this conclusion. He argues that the rambling nature of his bill should have suggested to the court that he was

incompetent. However, the lengthy nature of appellant's comments simply shows that he had a lot of issues that he believed needed to be preserved for appellate review. *See George v. State*, 446 S.W.3d 490, 501 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd) (explaining that the defendant's rambling answers did not signal incompetence); *see also Lawrence v. State*, 169 S.W.3d 319, 322-23 (Tex. App.—Fort Worth 2005, pet. ref'd) (noting defendant's rambling and nonresponsive answers to questions did not constitute evidence of incompetency because his answers revealed "he simply wanted his day in court and wanted an opportunity to tell his story his way").

Appellant next argues that his statements while making the bill should have alerted the judge to his incompetency because they were irrational and incoherent (AB 16). However, a reading of the entire bill reveals that it is both rational and coherent. To be sure, appellant makes several outlandish and unfounded claims including allegations of bribery and corruption and an assertion that the trial had been staged (9RR 36-37). However, when read it in context, it is apparent that appellant was simply attempting to raise every possible issue that could conceivably be used to overturn his conviction on appeal. Therefore, the unfounded nature of some of appellant's claims does not render them to be irrational or incoherent.

Appellant is correct to note that he did use some odd terminology in his bill including the terms "memory box" and "motion of the mind" (9RR 37, 40). He also spelled out words that appeared to be out of context such as "incumbent" and "didactic" during his bill (9RR 39-40). However, it is important to note that these words

and phrases constituted only a few sentences out of the approximately eleven pages of the record appellant spent creating the bill (9RR 35-46). Furthermore, as noted previously, the vast majority of appellant's comments during the bill were rational and coherent; if unsupported by the record. In this context, the trial court could reasonably have concluded that appellant's odd phrases reflected not his incompetence but rather paranoia that had existed at the time of his competency evaluation. See *Lewis*, 532 S.W.3d at 428 (the defendant's bizarre questions and his reference to himself as "the Paramount Security Interest Holder" did not constitute a suggestion that required the trial court to conduct an informal competency evaluation).

In summary, none of appellant's actions or comments at trial amounted to a suggestion that required the trial court to conduct an informal competency hearing. This is because none of his actions or comments suggested that he lacked the ability to communicate with his attorney or understand the trial proceedings. Consequently, the trial court did not abuse its discretion by choosing not to conduct an informal competency evaluation.

**e. Sufficient inquiry**

However, even appellant's words and actions did constitute a suggestion of his incompetency, his claim would still fail because the trial court made sufficient observations and inquiries of appellant throughout the trial to satisfy its obligation to conduct an informal competency inquiry.

In making such an inquiry, a trial judge is not obligated to follow specific procedures or protocols. *See George v. State*, 446 S.W.3d 490, 501 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd; *see also Teal v. State*, No. 01-10-00506-CR, 2011 WL 6140676, at *2 (Tex. App.—Houston [1st Dist.] Dec. 8, 2011, pet. ref'd) (mem. op., not designated for pub.) ("As its name suggests, an informal inquiry does not have specific formal requirements."). Consequently, speaking with a defendant and observing his answers to a variety of questions can satisfy a judge's duty to conduct an informal competency inquiry. *Schoor v. State*, 279 S.W.3d 844, 847 (Tex. App.—Amarillo 2009, pet. ref'd) (trial judge's exchange with defendant and his observance of him during punishment phase of trial satisfied his obligation to conduct an informal competency inquiry); *See also Gray*, 257 S.W.3d at 829 (brief informal exchange between trial court and defendant was sufficient to constitute an informal inquiry into competency).

In this case, the judge observed appellant as he testified at length during trial. The trial judge also had ample opportunity to observe appellant's communication with counsel and his ability to understand the proceedings against him. During the guilt/innocence phase, appellant rationally answered a wide range of questions and provided the basis for his self-defense claim (5RR 121-23). In fact, the State noted in its closing that the only evidence of self-defense came from appellant's testimony (6RR 56). Appellant himself concedes on appeal that his testimony did not suggest incompetency (AB 24). Further, a portion of appellant's testimony during the punishment phase was so impactful that the jury requested to hear it again before it

assessed a sentence below what even appellant's counsel had requested (9RR 23, 49-51). Further, appellant's attorney asked appellant questions in front of the judge and appellant's responses demonstrated that he understood the trial procedure (3RR 38-41).

Additionally, the judge observed appellant confer with his counsel, heard him discuss his right to testify at trial, and questioned him after the clerk's masturbation allegation (5RR 212; 7RR 108-112; 8RR 20-33). These actions, along with the judge's observance of appellant's demeanor during trial, show that the trial court made sufficient inquiry into appellant's mental competency to satisfy its duty to hold an informal inquiry as required by 46B.004(c). *See Ross v. State*, 133 S.W.3d 618, 627 (Tex. Crim. App. 2004) (noting that a trial court's first-hand factual assessment of a defendant's competency is entitled to great deference on appeal); *see also Schoor*, 279 S.W.3d at 847 (concluding that trial court made sufficient inquiry by observing the defendant throughout the punishment hearing as well as speaking with him about the punishment range, sexual offender registration requirements, and his right against self-incrimination to constitute an informal competency inquiry). The judge signaled as much when she told appellant he had "done a great job up until [the masturbation] allegation" (7RR 108).

Therefore, even if the record contains a suggestion that appellant was incompetent to stand trial, appellant's claim must still fail because the record shows that the trial court conducted an informal competency inquiry. For this reason, appellant's

claim that the trial court abused its discretion by not conducting such an inquiry is factually incorrect.

In conclusion, appellant's jail infractions did not suggest incompetence because appellant committed the infractions that might have been caused by mental illness before he was evaluated and found to be competent. Appellant's alleged masturbation during trial did not trigger the judge's duty to conduct an informal competency inquiry because the judge could have reasonable concluded that appellant committed the act, not due to a lack of competency, but because of some other motive. Appellant's comments during his bill of exception did not require the judge to conduct an informal competency evaluation because appellant's comments were coherent and his use of odd terminology was consistent with statements he made during his competency evaluation. Finally, appellant's claim would fail even if the trial court was required to conduct an informal competency evaluation because the record shows that the court did conduct such an evaluation by questioning and observing appellant throughout the trial. For all the reasons, appellant's sole point of error must be overruled.

## CONCLUSION

The State of Texas respectfully urges the Court to overrule appellant's sole point of error and affirm his conviction.

**SEAN TEARE**
District Attorney
Harris County, Texas

/s/ Chris Conrad
**CHRIS CONRAD**
Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
(713) 274-5826
State Bar No. 24055338
conrad_chris@dao.hctx.net

## CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this computer-generated document has a word count of 6,818 words, based upon the representation provided by the word processing program that was used to create the document. TEX. R. APP. P. 9.4(i).

/s/ Chris Conrad
**CHRIS CONRAD**
Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
(713) 274-5826
State Bar No. 24055338

## CERTIFICATE OF SERVICE

The State will send a copy of the foregoing instrument to appellant's attorney via TexFile at following address:

Stephen Aslett
stephen@aslettlaw.com

/s/ Chris Conrad
**CHRIS CONRAD**
Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
(713) 274-5826
State Bar No. 24055338

Date: February 13, 2026

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