

CAUSE NO. **01-24-00227-CR & 01-24-00228-CR**

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IN THE COURT OF APPEALS  
FOR THE FIRST SUPREME JUDICIAL DISTRICT  
AT HOUSTON

FILED IN  
1st COURT OF APPEALS  
HOUSTON, TEXAS  
10/14/2024 6:55:42 PM  
DEBORAH M. YOUNG  
Clerk of The Court

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RUSSELL CORMIER

Appellant,

Vs.

STATE OF TEXAS,

Appellee

\_\_\_\_\_  
Appealed from the 262ND District Court  
Of Harris County, Texas  
Cause Number 1548048 & 1549218

\_\_\_\_\_  
**APPELLANT'S BRIEF**  
\_\_\_\_\_

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ORAL ARGUMENT NOT REQUESTED

## **IDENTITIES OF PARTIES AND COUNSEL**

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PRESIDING JUDGE:	HON. DENISE BRADLEY 262ND DISTRICT COURT
PROSECUTOR(S):	MS. SEPI ZIMMER SBOT NO. 24100440 MR. BRYAN HONEYCUTT SBOT NO. 24090856 HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE
STAND-BY COUNSEL:	MR. ADAM MULDROW SBOT NO. 24060307 ATTORNEY AT LAW  MR. HARRIS WOOD JR SBOT NO. 21894400 ATTORNEY AT LAW

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**APPELLANT'S BRIEF**

TO THE HONORABLE FIRST COURT OF APPEALS:

NOW COMES, RUSSELL CORMIER, Appellant in the above entitled and numbered cause, files this Appellant's Brief, and would respectfully show the following:

## **STATEMENT OF THE CASE**

This is an appeal from the Trial Court's JUDGMENT OF CONVICTION BY JURY finding Appellant GUILTY of two counts of the offense of MURDER and sentencing him to NINETY years. (CLRK. REC. – 1126)<sup>1</sup>. Appellant timely filed a NOTICE OF APPEAL. (CLRK. REC. – 1140). The Notice was accepted, and the case was given the above referenced appellate cause number. Appellant has not filed a MOTION FOR NEW TRIAL, an APPLICATION FOR WRIT OF HABEAS CORPUS, or any other original appellate or collateral proceeding in this cause.

## **STATEMENT OF THE FACTS**

On August 30, 2022, a *Farretta* hearing was held to determine whether appellant could waive counsel and proceed pro se. (RR.III – 1-28). During the hearing, the court queried appellant regarding his understanding of the charges and punishment range, the nature of the proceedings, and his personal legal training and experience. (RR.III – 17-18). Further, the trial court probed appellant's comprehension of his rights in a criminal proceeding such as his right to counsel at no personal cost, his ability to challenge any conviction on ineffective assistance of counsel grounds, and that he would be held to the same standard as a licensed attorney and would not receive any special consideration due to a lack of experience.

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<sup>1</sup> All citations to the clerk's record refer to the record entered in cause no. 1549218.

(RR.III – 20-23). At the conclusion of the hearing, the trial court found his waiver to be effective, issued orders relating to the production of discovery under that framework, and appointed standby counsel. (RR.III – 24).

### **STATEMENT REGARDING ORAL ARGUMENT**

Appellant does not request oral argument on the basis that the facts and the legal arguments are adequately presented in this brief and in the record. Moreover, the decisional process would not be significantly aided by oral argument. However, should the State of Texas or the Court request oral argument, Appellant requests the opportunity to participate in oral argument.

## **ISSUES PRESENTED**

### ***ISSUES FOR REVIEW***

***The trial court erred in finding appellant's waiver of counsel due to his incompetence.***

## **SUMMARY OF THE ARGUMENT**

Prior to voir dire, a *Farretta* hearing was held to determine whether appellant could waive counsel and proceed pro se. At the conclusion of the hearing, the trial court found his waiver to be effective, issued orders relating to the production of discovery under that framework, and appointed standby counsel. Although a criminal defendant has a constitutional right to proceed without counsel, a trial court may insist on attorney representation if the defendant is not competent to do so due to a mental illness or injury. Here, the trial court heard that Appellant had suffered from a traumatic brain injury three years before the hearing, had difficulties with vertigo, recurring headaches, blurred vision, and memory loss. A formal competency evaluation was therefore required as there is sufficient evidence to create a bona fide doubt as to whether the defendant met the test of legal competence, and the trial should have denied his request due to his incompetence. Therefore, the trial court abused its discretion in allowing Appellant to proceed pro se without having a full competency evaluation as there was a bona fide doubt as to appellant's competency.



## ARGUMENT AND AUTHORITIES

### ISSUE FOR REVIEW

*The trial court erred in finding Appellant's waiver of counsel due to his incompetence.*

### Right to Self-representation

Every criminal defendant has a constitutional right to the assistance of counsel and the constitutional right to self-representation. U.S. Const. amend. VI; Tex. Const. art. I § 10; *Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975); *Osorio-Lopez v. State*, 663 S.W.3d 750, 756 (Tex. Crim. App. 2022). "In all criminal prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for his defence." U.S. Const. amend. VI. The right to counsel is a fundamental right, and the "[c]ourts indulge every reasonable presumption against waiver and do not presume acquiescence in the loss of fundamental rights." *Williams v. State*, 252 S.W.3d 353, 356 (Tex. Crim. App. 2008). But if a criminal defendant elects to proceed without counsel, he has a constitutional right to do so. *See Indiana v. Edwards*, 554 U.S. 164, 170, 128 S. Ct. 2379 2383, 171 L. Ed. 2d 345 (2008); *Faretta*, 422 U.S. at 819-20.

Several benefits associated with the right to counsel are relinquished upon a defendant's invocation of his right to self-representation. *See Faretta*, 422 U.S. at 835, 95 S. Ct. at 2541; *see also Williams*, 252 S.W.3d at 356. To be constitutionally effective, a waiver of the right to counsel must be made (1) competently, (2)

knowingly and intelligently, and (3) voluntarily. *Moore v. State*, 999 S.W.2d 385, 396 (Tex. Crim. App. 1999). A denial of the constitutional right to trial counsel is a structural defect that affects the framework of the trial. *Williams*, 252 S.W.3d at 357. Therefore, when the right is violated, prejudice is presumed because the trial has been rendered inherently unfair and unreliable. *Id.* When the record does not affirmatively show that the defendant was sufficiently admonished, it is reversible error and not subject to a harm analysis. *Id.*

The decision to waive counsel and proceed *pro se* is made knowingly and intelligently if it is based on a full understanding of the right to counsel, which is being abandoned, as well as the dangers and disadvantages of self-representation. *Collier v. State*, 959 S.W.2d 621, 626 (Tex. Crim. App. 1997). A defendant "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing, and his choice is made with eyes open.'" *Faretta*, 422 U.S. at 835, 95 S. Ct. at 2541 (*quoting Adams v. ex. rel. McCann*, 317 U.S. 269, 279, 635 S. Ct. 236, 242, 87 L. Ed. 268 (1942)); *Williams*, 252 S.W.3d at 356. No formulaic questioning or particular script is required for a trial court to assure itself that an accused has asserted his right to self-representation with eyes open. *Burgess v. State*, 816 S.W.2d 424, 428 (Tex. Crim. App. 1991). A valid waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments,

possible defenses to the charges, any mitigating circumstances, and all other facts essential to a broad understanding of the whole matter. *Blankenship v. State*, 673 S.W.2d 578, 583 (Tex. Crim. App. 1984). Furthermore, the trial judge must inform the defendant that there are technical rules of evidence and procedure and he will not be granted any special consideration solely because he asserted his pro se rights. *Williams*, 252 S.W.3d at 356.

Regarding competency, the relevant question is whether the defendant was competent to waive the right to counsel, not whether she was competent to represent herself. *Indiana*, 554 U.S. at 172; see also *Dunn v. State*, 819 S.W.2d 510, 523 (Tex. Crim. App. 1991). Generally, the standard for waiving the right to counsel is no higher than that for competency to stand trial. *Chadwick v. State*, 309 S.W.3d 558, 560 (Tex. Crim. App. 2010). In Texas, a defendant is competent to stand trial if she has sufficient present ability to consult with her lawyer with a reasonable degree of rational understanding or a rational and factual understanding of the proceedings against her. *Fuller v. State*, 253 S.W.3d 220, 228 (Tex. Crim. App. 2008). A competency determination is required only when there is sufficient evidence to create a bona fide doubt as to whether the defendant meets the test of legal competence. *Moore*, 999 S.W.2d at 393. Evidence is sufficient to create a bona fide doubt if it shows recent severe mental illness, at least moderate retardation, or truly bizarre acts by the defendant. *Id.*

## Standard of Review

Pursuant to *Indiana v. Edwards* and *Chadwick v. State*, the trial court's decision to permit self-representation is reviewed for an abuse of discretion. See *Indiana*, 554 U.S. at 177; *Chadwick*, 309 S.W.3d at 561. Thus, the evidence is viewed in a light most favorable to the trial judge's ruling and implying any findings supported by the evidence and necessary to support the trial judge's ruling. *Id.*

## Analysis

Although there is a "heightened" standard for waiving the right to counsel – that the waiver must be knowing and intelligent – there is not a heightened standard of competence. See *Godinez v. Moran*, 509 U.S. 389, 400-401 (1993). The standard for competency to waive the right to counsel is the same as the competency to stand trial standard. *Osorio-Lopez*, 663 S.W.3d at 757. States may adopt a higher standard, but they are not required to do so. *Id.* (citing *Indiana*, 554 U.S. at 178); see *Godinez*, 509 U.S. at 402 ("while States are free to adopt competency standards that are more elaborate..., the Due Process Clause does not impose these additional requirements."). Texas has not adopted a higher standard. *Osorio-Lopez*, 663 S.W.3d at 757.

Appellant asserts that the standard expressed in *Indiana* should apply to this case. Specifically, that even when a defendant is competent to stand trial, a trial court may nonetheless insist that the defendant be represented by counsel if the defendant

is suffering from a severe mental illness and is unable to conduct trial proceedings by himself-to support his proposition that he was not competent to waive his right to counsel. *Fletcher v. State*, 474 S.W.3d 389, 400 (Tex. App.-Houston [14th Dist.] 2015, pet. ref'd).

Here, the trial court heard that Appellant had suffered from a traumatic brain injury three years before the hearing and had difficulties with vertigo at that time. (RR.III – 5). Appellant also stated that he had recurring headaches, blurred vision, and memory loss. (RR.III – 16). Appellant further stated that he was not receiving treatment for the above-described symptoms and injury. *Id.* No further inquiry was made regarding the state of his injury, cognitive function, or necessary treatment. A formal competency evaluation was therefore required as there is sufficient evidence to create a bona fide doubt as to whether the defendant met the test of legal competence, and the trial should have denied his request due to his incompetence. *Moore*, 999 S.W.2d at 393; *Fletcher*, 474 S.W.3d at 400. Therefore, the trial court abused its discretion in allowing Appellant to proceed pro se without having a full competency evaluation as there was a bona fide doubt as to appellant's competency.

ACCORDINGLY, this Court should SUSTAIN Appellant's ISSUE FOR REVIEW; VACATE the Trial Court's JUDGMENT; and REMAND the cause to the Trial Court below for a NEW TRIAL.

## **CONCLUSION AND PRAYER**

For the foregoing reasons, the Appellant prays that this Honorable Court SUSTAIN Appellant's ISSUES FOR REVIEW; VACATE the Trial Court's JUDGMENT; and REMAND the cause to the Trial Court below for a NEW TRIAL.

Appellant further prays for all relief to which he may be entitled.

Respectfully submitted,



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## **CERTIFICATE OF SERVICE**

This is to certify that on the day of October 14, 2024, a true and correct copy of the above and foregoing Appellant's Brief was served on the HARRIS County District Attorney's Office, through the e-file service system.



TOM ABBATE

## **CERTIFICATE OF COMPLIANCE**

This is to certify that the brief filed in case numbers **01-24-00227-CR & 01-24-00228-CR** complies with requirement of Tex. R. App. P. Rule 9.4(i)(3). According to the computer program used to prepare the document, the entire brief has the following number words: 2,374 including footnotes.



TOM ABBATE



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