No. 01-24-00856-CR

IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS

JAVIER ARMANDO PEREZ MEJIA
Appellant

v.

THE STATE OF TEXAS
Appellee

On Appeal from Cause Nos. 1843664
From the 174th District Court of Harris County, Texas

BRIEF FOR APPELLANT

Oral Argument Requested

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Statement of the Case

On January 17, 2024, a Harris County grand jury returned an indictment charging Javier Armando Perez Mejia with the felony offense of possession of a controlled substance, Penalty Group 1/1-B (Methamphetamine), >=1 gram and < 4 grams, alleged to have occurred on or about November 10, 2023. (C.R. at 48).[1] Tex. Health & Safety Code § 481.115. On October 23, 2024, a jury found Appellant guilty of the offense of Possession of a Controlled Substance Penalty Group 1/1-B, > =1 gram and < 4 grams. (C.R. at 100; 117; 4 R.R. at 63). The trial court assessed a sentence of five (5) years in the Texas Department of Criminal Justice, Correctional Institutions Division. (C.R. at 117; 5 R.R. at 19). The trial court certified Appellant's right to appeal and he timely filed his notice of appeal on October 29, 2024. (C.R. at 124-126). No Motion for New Trial was filed.

Statement Regarding Oral Argument

Oral argument is requested. Tex. R. App. P. 39.7. This case presents numerous failures to assess competency to stand trial despite evidence of incompetency from multiple sources. Appellant respectfully submits oral argument would be helpful to the Court.

[1] Before the indictment, this cause was the subject of a Pre-Trial Intervention Contract on the Responsive Interventions for Change Docket. (C.R. at 155). Pursuant to a December 18, 2023, Docket Transfer Order, the case was transferred to the "next district court in rotation." (C.R. at 44).

Issues Presented

ISSUE ONE

The trial court abused its discretion in failing to conduct a *sua sponte* informal inquiry into Appellant's competency to proceed with trial.

Statement of Facts

Appellant is a 24-year-old man who has mental illness: schizoaffective disorder, depressive type, and mood disorder. (C.R. at 42). Prior to his most recent diagnoses, he had been diagnosed with unspecified psychotic disorder, substance induced psychotic disorder and substance induced psychosis vs. schizophrenia. (C.R. at 42). In 2021, 2022, and 2023, Appellant received inpatient treatment for psychosis, depression, anxiety, suicidal ideations/attempt. (C.R. at 42). He also has a history of receiving outpatient mental health services in 2022 for depression, anxiety and psychosis. (C.R. at 42).

The morning after Appellant's arrest, the form for Early Identification of Suspected Mental Illness or Intellectual Disability TEX. CODE CRIM. PROC. ART.16.22 was filed in the cause. (C.R. at 15; 155). The form indicated a "Finding of Previous Interview" meaning that "[i]n the year preceding the date of the arrest, the Defendant ha[d] been determined to have a mental illness or to be a person with an intellectual disability…" (C.R. at 15). It was ordered that Appellant be interviewed in accordance with this finding. (C.R. at 15). Pursuant to the Collection of Information Form for Mental Illness and Intellectual Disability, specific evidence

of Appellant's illness was made a part of the record as of December 8, 2023. (C.R. at 42; 156).

Court grants state's motion *in limine* regarding Appellant's mental health

Immediately before voir dire, the prosecution raised an oral motion *in limine* regarding "any mention of mental health or mental health issues, I would ask to limine it out on the basis of relevance." (2 R.R. at 5). Defense counsel raised no objection. (2 R.R. at 5). The court ruled: "And the relevancy of his mental health, whatever status that is, is supposedly not relevant at this time. It may be in punishment if we get there, but not at this time." (2 R.R. at 5).

The incident

Though Appellant has a family who cared and provided for him, he was experiencing homelessness at the time of his arrest. (C.R. at 18, 42; 4 R.R. at 19, 39-40; 5 R.R. at 7, 12-13). This bout of homelessness led him to access the Bellaire Recreation Center to shower and charge his cell phone. (4 R.R. at 18, 28-29, 31). Appellant was asked to leave the community center on November 2, 2023, because he was sitting on the ground in front of the exit doors. (3 R.R. at 15, 17). He returned to the community center on the day of the incident—November 10, 2023—again to shower and charge his cell phone. (3 R.R. at 12-13, 17; 4 R.R. at 18, 28, 31).

Grant Haynes is the recreation supervisor for the City of Bellaire Recreation Center. (3 R.R. at 37). He oversees activities and manages staff. (3 R.R. at 39). He described the process of giving someone a criminal trespass warning as one limited to the special circumstances of repeat policy-violators. (3 R.R. at 40). It is a policy he utilized approximately three times in his six years there. (3 R.R. at 40).

On the day of the incident, he stated Appellant was blocking an exit and refused to leave when asked. (3 R.R. at 41). His co-worker issued a criminal trespass warning to Appellant, and Haynes witnessed it. (3 R.R. at 41). Haynes continued: "He was blocking a fire exit, which – so our facility has four exits. And he was laying up against one of the exit doors and had been asked just to move away from it so that it wouldn't be blocking a fire exit." (3 R.R. at 43). Haynes agreed with defense counsel that the area outside the rec center is considered public space, that Appellant was occupying that public space and was not trespassing. (3 R.R. at 43).

Police perspective

Officer Delfino Guerra, Bellaire Police Department, was dispatched to a criminal trespass call at the Bellaire Recreation Center located at 7008 5th Street in Bellaire, Texas. (3 R.R. at 12-13). It was Guerra's testimony that he was told to look for a person they had encountered during a trespass warning at the rec center a few days prior. (3 R.R. at 15, 17). Two other officers were with Guerra when they

arrived at the rec center and observed Appellant sitting on the ground by the exit. (3 R.R. at 13-14). Guerra stated Appellant was sitting in the same spot he was the last time he saw him. (3 R.R. at 14, 17). He stated Appellant "was asked to leave because he was blocking the exit doors." (3 R.R. at 17). Officers gave him verbal warnings to leave after speaking with rec center employee, Grant Haynes.[2] (3 R.R. at 20-21). They detained him on sight, performed a pat-down search and put him in the back of the patrol car. (3 R.R. at 23).

Methamphetamine recovered from Appellant at the jail

According to Officer Guerra, it was when they arrived at the stationhouse that Appellant spontaneously told them he had "ice"[3] in his jacket pocket. (3 R.R. at 25). Guerra stated that Appellant informed them he found the methamphetamine at a laundromat. (3 R.R. at 28; 55). Guerra's partner, Officer Abbie Parnell, removed the plastic baggie from Appellant's pocket and it field-tested positive for the substance. (3 R.R. at 27, 28, 57). Later, Heidi Schultz, chemist at Harris County Institute of Forensic Sciences, performed the chemical analysis reflected in State Exhibit 12—her laboratory-generated drug chemistry report. (4 R.R. at 4, 8, 12). Schultz's testing found "[t]he substance was methamphetamine with a net weight of

[2] Haynes was the complainant on both November 2 and November 10. (3 R.R. at 22).
[3] "Ice" refers to methamphetamine. (3 R.R. at 25).

1.734, plus or minus 0.037 grams, with a 95.45 percent level of confidence." (4 R.R. at 12; State Ex. 12).

According to Guerra (and later, Officer Parnell), Appellant did not appear to be intoxicated or under the influence of any substances during their encounter. (3 R.R. at 30, 66). They did not believe he had simply "found" the drugs at a laundromat. (3 R.R. at 30). Guerra emphasized that they arrested Appellant for criminal trespass. (3 R.R. at 35).

Appellant's perspective

Appellant testified that he returned to the rec center on November 10th, and though he was not asked to leave the premises, police were called. (4 R.R. at 19). "I talked to the people in the lobby," Appellant stated. "They said I could charge my phone inside or outside the building since I used the showers to shower." (4 R.R. at 18). It was also his testimony that Guerra said he was arresting him for trespassing. (4 R.R. at 19).

Appellant testified that while still at the rec center, he told Officer Guerra that he was in possession of "ice" that he had planned to turn over to police after finding it outside a corner store down the street. (4 R.R. at 20).

On cross-examination, Appellant indicated that despite the November 2 trespass warning, he had permission from the workers to use the rec center showers.

(4 R.R. at 28). He also stated he was at the rec center to charge his cell phone. (4 R.R. at 29).

When asked by defense counsel on redirect examination why he was at the rec center, Appellant stated, "I was homeless because I live by the Ten Commandments, to have dreams with God. That made my dad mad because I'm rebuilding the temple in Israel until the rapture." (4 R.R. at 39-40).

State sought to impeach Appellant after mention of Ten Commandments

After Appellant mentioned the Ten Commandments, the prosecution sought to impeach his testimony: "Your Honor…the defendant stated that - - or talked about living by the Ten Commandments. The State's position is that opens the door to his prior conviction of assault with a family member since it's engaging in domestic violence." (4 R.R. at 42). The court questioned this position, and the state responded, "I want to impeach his statement regarding the Ten Commandments with his felony - - or with his misdemeanor - - excuse me - - conviction, assault with a family member, because it goes towards his peacefulness." (4 R.R. at 42). After finding that "peacefulness" was not relevant to the instant case, the court made the following statement: "So at this point, he made a statement about some random stuff. That's kind of a collateral issue. None of that stuff is relevant to this trial." (4 R.R. at 42-43). The discussion continued:

Court: He's put his character in issue. He's put his character in issue by saying he follows the Ten Commandments.

Defense Counsel: Yeah. And I told him not to do that.

Court: He can always ask him what he means by that, but I don't know about that can of worms. You may not - - don't ever ask an open-ended question on cross-examination.

Defense Counsel: I told him not to mention that at all.

***

Court: It's kind of tangentially the issue, but it is out there for the jury to consider, unless you want - - and it's kind of late. Nobody stood up and objected to it.

Defense Counsel: Well, he caught me off guard because I told him not to, but of course, he doesn't pay me any attention.

(4 R.R. at 43-45).

The court decided the prosecution should be allowed to follow-up on Appellant's mention of the Ten Commandments. (4 R.R. at 45). The state asked, "Your testimony today was that you live by the Ten Commandments. Could you clarify what that means?" (4 R.R. at 45). Appellant responded, "That means I keep the Sabbath. So Saturday, I wouldn't do any drugs. I don't do drugs, coffee. Saturdays. I don't work, sell Saturdays." (4 R.R. at 45-46).

Punishment

Rene Perez Aguilar, Appellant's father

Appellant's father, Rene Perez Aguilar, testified for the prosecution about an incident that occurred after he picked his son up from the hospital one night. (5 R.R.

at 5-6).[4] He confronted his son about playing loud music on his cell phone late that night. (5 R.R. at 8). He stated Appellant then struck him with the cell phone and broke his nose. (5 R.R. at 8; State Ex. 15 & 16). Rene stated his son also struck him with keys on his torso. (5 R.R. at 10; State Ex. 17). It was his testimony that they called police because "he looked like he was crazy…He was kind of out of his mind." (5 R.R. at 10).

Next, Rene said Appellant took his father's blood from the floor and drew a cross with it on his own forehead. (5 R.R. at 11; State Ex. 20). When asked by the prosecution whether Appellant said anything during this incident, Rene replied, "Well, you know, he was very upset. I don't know if the medication that he received at the hospital put him in that state, but he was very out of his mind." (5 R.R. at 12).

Around the time of the assault case, Rene stated he had taken Appellant to the hospital when Appellant said he was not feeling well, and his hospital stay lasted eight days. (5 R.R. at 13). He believed his son was behaving in the strange manner "because of the medication that he had got at the hospital because he usually doesn't behave that way. I have never seen him like this before." (5 R.R. at 13). Appellant also had troubles at the hospital and was involved in a "fight with a security guard." (5 R.R. at 14).

[4] Rene testified with the help of an interpreter. (5 R.R. at 5).

Finally, asked about a May 14, 2024, incident, Rene stated Appellant "was feeling extremely upset, he said - - because of a cat. He said if someone touched the cat, that person will die." (5 R.R. at 14). On cross examination, defense counsel asked whether the reason Appellant had been upset that day was because Rene killed his cat. Rene replied, "No. And he published it also on Facebook. He said that he hit me because I had killed his cat…" (5 R.R. at 15).

Rene was the sole witness during the penalty phase of trial, and the parties rested. (5 R.R. at 16). During punishment arguments, the prosecution argued Appellant had "made a mockery of a lot of the proceedings by signing his name as 'the devil' on the stipulation."[5] (5 R.R. at 17).

Summary of the Argument

The right to a fair trial is not a nebulous suggestion—it has nuts and bolts and gears to optimize its workings. To that end, the right not to be tried while incompetent is fundamental to due process. It is the duty of the lawyers *and* the trial courts themselves to safeguard it. The record in Appellant's case presents evidence of incompetence from multiple sources and numerous missed opportunities for inquiries. Appellant was denied due process and is entitled to an abatement for proceedings consistent with Chapter 46B of the Texas Code of Criminal Procedure.

[5] It appears that on the Motion for Community Supervision (C.R. at 115) and the Motion for Election of Punishment (C.R. at 116) Appellant wrote "The Devil" with a heart shape over the "i" on the signature line.

Argument

ISSUE ONE:

The trial court abused its discretion in failing to conduct a *sua sponte* informal inquiry into Appellant's competency to proceed with trial.

A. Standard of Review

Justice Kennedy described the requirement of competency as "rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial…" *Riggins v. Nevada*, 504 U.S. 127, 139 (1992) (Kennedy, J., concurring); *Dusky v. United States*, 362 U.S. 402, 402 (1960) (*per curiam*). The test outlined in *Dusky* and enumerated in the Texas Code of Criminal Procedure requires both "sufficient present ability to consult [counsel] with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings[.]" *Dusky*, 362 U.S. at 402; Tex. Code Crim. Proc. art. 46B.003. *See also Jackson v. State,* 548 S.W.2d 685, 691 (Tex. Crim. App. 1977) and *Turner v. State*, 422 S.W.3d 676, 689 (Tex. Crim. App. 2013). The court has a *sua sponte* duty to conduct an informal inquiry and stay all other proceedings when evidence to support a finding of incompetency comes to the attention of the court. Tex. Code Crim. Proc. art. 46B.004(b)-(d). This duty arises under state law imposing mandatory obligations on the trial court—in a statute that repeatedly uses "shall" language. *See* Tex. Code Crim. Proc. art. 46B.001–.055 (hereafter "Chapter 46B")

(providing comprehensive guidance on mandatory process for assessing competency to stand trial and defining same). Those duties are not excused by defense counsel's inaction. *See Proenza v. State*, 541 S.W.3d 786, 797 (Tex. Crim. App. 2017). These rights are not waivable and may be addressed on appeal despite a failure to object below. *Pate v. Robinson*, 383 U.S. 375, 384 (1966) ; *Marin v. State*, 851 S.W.2d 275, 279 (Tex. Crim. App 1993).

Either party, or the trial court on its own motion, may suggest the defendant is not competent to stand trial. Tex. Code Crim. Proc. art. 46B.004(a). When such a suggestion is made, the trial court must conduct an informal inquiry to determine "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. art. 46B.004(c).

> A suggestion of incompetency is the threshold requirement for an informal inquiry under Subsection (c) and may consist solely of a representation from any credible source that the defendant may be incompetent. A further evidentiary showing is not required to initiate the inquiry and the court is not required to have a bona fide doubt about the competency of the defendant. Evidence suggesting the need for an informal inquiry may be based on observations made in relation to one or more of the factors described by Article 46B.024 or on any other indication that the defendant is incompetent within the meaning of Article 46B.003.

Tex. Code Crim. Proc. art. 46B.004(c-1). A trial court's decision to not hold an informal inquiry is reviewed for an abuse of discretion. *McDaniel v. State*, 98 S.W.3d 704, 709 (Tex. Crim. App. 2003); *Montoya v. State*, 291 S.W.3d 420, 426 (Tex. Crim.

App. 2009, superseded by Statute as stated in *Turner v. State*, 422 S.W. 3d 676 (Tex. Crim. App. 2013); *Brown v. State*, 129 S.W.3d 762, 765 (Tex. App. – Houston [1st Dist.] 2004, no pet.); *Moore v. State*, 999 S.W.2d 385, 393 (Tex. Crim. App. 1999). This Court should consider the evidence actually known by the trial court up until the point of sentencing and must not substitute its judgment for that of the trial court, but rather must determine whether the trial court's decision was arbitrary or unreasonable. *Brown v. State*, 960 S.W.2d 772, 775-76 (Tex. App. – Dallas 1997, pet. ref'd); *Montoya*, 291 S.W.3d at 426.

B. Argument and Authorities

"The requirement that the accused be competent to stand trial is a *fundamental* component of the accused's right to a fair trial." *Alcott v. State*, 51 S.W.3d 596, 602 (Tex. Crim. App. 2001) (en banc) (emphasis in original) (concurrence, citing *Drope v. Missouri*, 420 U.S. 162, 171-172 (1975) and *Pate v. Robinson*, 383 U.S. 375, 385 86 (1966)). A defendant has the right to be competent throughout his or her entire trial, which includes sentencing. *Drope v. Missouri*, 420 U.S. 162, 171-72, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975); *Casey v. State*, 924 S.W.2d 946, 949 (Tex. Crim. App. 1996). As the United States Supreme Court recognized in *Pate v. Robinson*, a trial court must make inquiry into a criminal defendant's mental competence once the issue is sufficiently raised. 383 U.S. 375, 385, 86 S. Ct. 836, 15 L.Ed.2d 815 (1966). *See McDaniel v. State*, 98 S.W.3d 704, 709 (Tex. Crim. App. 2003).

Under *Turner*, "[i]n making this determination, a trial court must consider only that evidence tending to show incompetency, 'putting aside all competing indications of competency, to find whether there is some evidence, a quantity more than none or a scintilla, that rationally may lead to a conclusion of incompetency.'" *Turner,* 422 S.W.3d at 692 (emphasis added). The "some evidence" standard "is not a particularly onerous one." *Id*. at 696.

In a capital case, Turner was accused and convicted of "the intentional murder of more than one person during the same criminal transaction, namely his wife and mother-in-law." *Id*. at 678. During trial, defense counsel were faced with the symptoms of Turner's serious mental illness—most disruptively, his delusional paranoia that resulted in multiple competency evaluations. Despite the litigation of the competency issue, the trial court did not stay the proceedings. *Id.* at 682. On direct appeal, Turner complained of the lack of a competency trial considering what had transpired. The Court of Criminal Appeals ultimately abated the appeal and remanded the cause to the trial court to determine the feasibility of a retroactive competency trial. (*Turner* at 696-97).[6]

[6] After his first retroactive competency trial ended in a mistrial, a jury ultimately found Turner was "not incompetent to stand trial at any point in time [during his trial]." *Turner v. State,* 570 S.W.3d 250, 262 (Tex. Crim. App. 2018). Nevertheless, Turner's conviction was still reversed and remanded for a new trial because of structural error under *McCoy v. Louisiana*, 584 U.S. 414 (2018). *Id.* at 277.

In an unpublished opinion last year, this Court addressed the question of whether the trial court abused its discretion by not *sua sponte* conducting an informal inquiry into the competency of the accused in *Pleasant v. State*, No. 01-23-00144-CR, 2024 WL 3350254 (Tex. App. – Houston [1st Dist.] July 9, 2024). Pleasant was convicted of repeated violations of a protective order. *Id.* at *1. He had exhibited bizarre and delusional behavior and ideas during the time leading up to his arrest, during his pretrial detention and during his trial testimony. *Id.* at *1-2. Pleasant's defense counsel moved for a competency evaluation, and two separate evaluations were performed. *Id.* at *2. The psychologist addressed the statutory competency factors, and a determination was made that Pleasant was competent to stand trial. (*Pleasant* at 2, 5-6). Pleasant's medical records included diagnoses of schizoaffective disorder, bipolar type, as well as abuse of various substances. (*Id.* at 6). Evidence of incompetency was presented during the punishment phase of trial—including testimony of the complaining witness about Pleasant's delusions and that "something seemed mentally off." (*Id*. at 5). The complainant and her family had witnessed Pleasant "in the middle of the highway walking back and forth talking to himself." (*Id.* at 5).

Despite the evidence presented by Pleasant's mental illness, the competency examiner found Pleasant was " 'oriented to person, place, time, and location' and 'could reason rationally and logically about his legal options in this case,' and his

delusional thoughts did not impair his ability to communicate with Dr. Boyce or 'have a reasonable discussion about the allegations or court proceedings.' " (*Pleasant* at *6). This court reasoned that with two evaluations indicating competency, a lack of argument from defense counsel that Pleasant was not competent to stand trial and no indication from defense counsel that he had trouble communicating or consulting with his client, the trial court had not abused its discretion by not conducting a *sua sponte* informal competency inquiry. Assuming, without conceding, that *Pleasant* was decided correctly, those facts are not presented here; it is distinguishable from Appellant's case on its face because there was no competency evaluation of Appellant. Despite the obvious need, Appellant received no such inquiries, evaluations or findings.

Lastly, the Court of Criminal Appeals recently reminded courts below about how the statutory requirements of Chapter 46B are to be carried out. *See Bluntson v. State*, No. AP-77,067, 2021 WL 2677462 (Tex. Crim. App. June 30, 2021) (unanimous unpub. decision) (describing Chapter 46B's requirements and holding trial court erred in failing to follow them). All that is required to trigger the obligation to inquire into competency are "observations made in relation to one or more of the factors described by Article 46B.024 or on any other indication the defendant is incompetent within the meaning of Article 46B.003." *Id*. If that "some evidence" standard is met, the trial court must order a competency examination, and,

but-for a statutorily described exception, hold a formal competency trial. *Bluntson*, *supra*, at *4; *Turner*, 422 S.W.3d at 693; Arts. 46B.005(a)–(b), 46B.021(b).

The Texas competency statutes "allow competency to be raised, by either party or the judge, at any time before sentence is pronounced." *Morris v. State*, 301 S.W.3d 281, 290 (Tex. Crim. App. 2009). The "evidence" envisioned by article 46B.004 required to trigger the mandatory informal inquiry "may consist solely of a representation from any credible source that the defendant may be incompetent." Tex. Code Crim. Proc. art. 46B.004(c-1).

Evidence in the clerk's record

The question of Appellant's competency was documented in the clerk's record noting diagnoses of schizoaffective disorder, depressive type, and mood disorder. (C.R. at 42). The record also reflects prior diagnoses of unspecified psychotic disorder, substance induced psychotic disorder and substance induced psychosis vs. schizophrenia. (C.R. at 42). Appellant had multiple hospitalizations and outpatient treatment for psychosis, depression, anxiety, suicidal ideations/attempt. (C.R. at 42).

What are schizoaffective disorder, mood disorder and psychosis?

In 2023, the National Alliance on Mental Illness (NAMI) published a guide explaining why the language used to discuss mental health matters: *Schizophrenia*

and Psychosis Lexicon Guide 2023.[7] Citing the fifth edition text revision of the Diagnostic and Statistical Manual of Mental Disorders, it defines the requirements of a schizophrenia diagnosis as follows:

> [It] requires the presence of at least two out of five key symptoms for a significant portion of one month. Key symptoms include:
>
> • "Positive" symptoms (those in which a characteristic or experience is present) such as delusions and hallucinations
>
> • "Negative" symptoms (those in which a characteristic or experience is absent) such as diminished emotional expression or diminished motivation
>
> • Disorganized or catatonic behavior.

Schizophrenia and Psychosis Lexicon Guide 2023 at *5.

The Guide notes that schizoaffective disorder and psychosis spectrum disorder are related, but distinguishable: "While schizoaffective disorder refers to a condition that includes similar symptoms of schizophrenia but with the addition of mood symptoms, psychosis spectrum disorder or schizophrenia spectrum disorder refers to the entire category of conditions that may involve psychosis, including schizophrenia, schizoaffective disorder, and bipolar disorder or depression with psychosis." *Schizophrenia and Psychosis Lexicon Guide* 2023 at *5.

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[7]SCHIZOPHRENIA AND PSYCHOSIS LEXICON GUIDE (2023), *available at* www.nami.org/about-mental-illness/mental-health-consditions/schizoaffective-disorder/NAMI-Schizophrenia-Psychosis-Lexicon-Guide.pdf. (Last visited March 24, 2025). NAMI is "the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness." *Schizophrenia and Psychosis Lexicon Guide* 2023, "About NAMI" at *ii.

Finally, the Guide defines "psychosis" as: "a disruption or impairment in an individual's ability to differentiate between their perceptions and reality. This may include an inability to identify boundaries between real and unreal experiences and disruption to cognitive processing, as evidenced by delusions, hallucinations, and significantly disorganized speech." *Schizophrenia and Psychosis Lexicon Guide* 2023 at *6.

Evidence in state's motion in *limine*

The matter of competency was also raised directly by the State in an oral motion in limine regarding "any mention of mental health or mental health issues" immediately preceding voir dire. (2 R.R. at 5). Coupled with the information contained in the Collection of Information Form for Mental Illness and Intellectual Disability (C.R. at 42), the need for an inquiry into Appellant's competency arose.

Evidence in facts of incident

However, if the need for an inquiry was not then obvious, the unfortunate circumstances of the instant offense—while not available to the court until the testimony—were another cue. It is highly unusual behavior for an adult person to lie or sit in front of a community center doorway long enough for a concerned staffer to call police. (3 R.R. at 43).

The state may argue that Appellant's testimony was sensible and coherent and, therefore, did not raise any question of his competency. But if intrusive thoughts

and emotions were like a river and executive functioning like a dam, the dam eventually burst under pressure. "I was homeless because I live by the Ten Commandments, to have dreams with God," Appellant stated. "That made my dad mad because I'm rebuilding the temple in Israel until the rapture." (4 R.R. at 39-40). Rather than pausing to debate what just happened and whether something was amiss, the prosecution doubled down with an argument that this mention of the Ten Commandments "opened the door" to Appellant's misdemeanor assault-family member conviction and paved the way to impeach Appellant's character for peacefulness. (4 R.R. at 42).

Evidence in defense counsel's frustrations

Defense counsel openly expressed his grief over Appellant's inability to refrain from discussing his plan to "[rebuild] the temple in Israel until the rapture." (4 R.R. at 40). Counsel lamented: "Yeah. And I told him not to do that…I told him not to mention that at all." (4 R.R. at 43-44). Later, the court expressed confusion: "I don't know what he means by that, about the Ten Commandments." (4 R.R. at 44). "I don't either," defense counsel replied. (4 R.R. at 44). When the court pointed out that "Nobody stood up and objected to it," defense counsel replied, "Well, he caught me off guard because I told him not to, but of course, he doesn't pay me any attention." (4 R.R. at 44-45). Defense counsel was obviously aware of this issue and had discussed it with Appellant before trial. The court was baffled as to why

Appellant relayed this information and defense counsel revealed privileged and confidential communications in a seeming attempt to mitigate the problem. Rather than make an inquiry, the court agreed with the state and allowed the prosecution more questions in reference to the Ten Commandments. (4 R.R. at 43). This discussion reveals yet another missed opportunity to inquire into Appellant's competency.

Evidence in punishment testimony

Another salient piece evidence supporting the need for a competency inquiry was the testimony of Appellant's father during punishment. He discussed the bizarre and traumatic circumstances surrounding Appellant's prior assault conviction and the booking photo from Appellant's prior arrest depicting a red cross on his forehead made of his father's blood. (5 R.R. at 5-14; State Ex. 20). He also testified about the disturbing allegation his son made on social media: that Rene killed Appellant's cat. (5 R.R. at 14-15). Rene feared these behaviors were related to medication reactions, but they are also indicative of Appellant's diagnoses. Further, numerous arrests, bouts of hospitalization and homelessness, possible drug use and time spent in the Harris County Jail are not likely to resolve Appellant's chronic condition(s). It is more likely these run-ins with the law negatively affected Appellant's wellbeing, perhaps causing him to decompensate. The totality of the circumstances pointed to the need for a competency inquiry—a need unmet by the court below.

C. Conclusion

Here, evidence of incompetency was presented in the clerk's record and the proceedings, therefore the statutory "some-evidence" standard was clearly satisfied to prompt competency inquiries. *Boyett v. State*, 545 S.W.3d 556, 565 (Tex. Crim. App. 2018); *Turner v. State*, 422 S.W.3d 676, 692-93 (Tex. Crim. App. 2013); *Ex Parte LaHood*, 401 S.W.3d 45, 52-53 (Tex. Crim. App. 2013). The harm that follows from not engaging with the applicable statutory framework when such evidence exists is a violation of due process. *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996). The trial court's abuse of discretion is documented. There was no inquiry conducted despite the clear evidence raising questions about Appellant's competency. Appellant was harmed by the failure to inquire into his competency because his right to be competent at trial is fundamental. Sufficient evidence was before the trial court to trigger the statutorily required inquiry as to Appellant's competence in keeping with his fundamental right to be tried while competent. The failure to comply with the clear guidance in Article 46B.004 and failure to proceed to an informal inquiry upon receipt of a "suggestion" of incompetency was an abuse of discretion. The lessons of *Turner* still ring true. Appellant is entitled to an abatement and remand for proceedings relating to his competency.

PRAYER

Appellant prays that this Court abate the appeal and remand the cause to the trial court to conduct an informal inquiry pursuant to Chapter 46B of the Texas Code of Criminal Procedure, and upon finding some evidence of incompetency, conduct a retrospective competency trial, if one is presently feasible, or for such other relief that this Court may deem appropriate.

Respectfully submitted,

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A true and correct copy of the foregoing brief was e-filed with the First Court of Appeals and was served electronically upon the Appellate Division of the Harris County District Attorney's Office on March 24, 2025.

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