



Robert Cook v. The State of Texas

2022 | Cited 0 times | Court of Appeals of Texas | March 31, 2022

In The Court of Appeals Seventh District of Texas at Amarillo

No. 07-21-00144-CV

ROBERT COOK, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 364th District Court Lubbock County, Texas Trial Court No. 2019-416,811,
Honorable Mark J. Hocker, Presiding

March 31, 2022

OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

pending criminal charges. Finding the State failed to prove by clear and convincing evidence that Cook is a person with mental illness under Texas Health and Safety Code section 574.034(a)(1)

application for temporary court-ordered inpatient mental health services. Background

In February 2019, Cook was indicted for the offense of aggravated sexual assault

of a child. 1 trial. After finding evidence existed supporting a finding of incompetency, the trial court
rrently

Commitment Following Competency Exam Incompetent but Likely to Regain



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incompetent to stand trial by the North Texas State Hospital at Vernon, Texas, for a period no longer than 120 days.

Cook was admitted to the state hospital on February 19, 2020. In an April 27, 2020 evaluation, a hospital clinician found Cook competent to stand trial. According to the benefit from hospitalization for trial competency has been achieved at this time. There are, therefore, no contraindications to this defendant returning to court to respond to his charge. Therefore, I would offer for adjudication the opinion that [Cook] is presently Detention Center in May 2020.

¹ See TEX. PENAL CODE ANN. § 22.021. In April 2021, on the motion of the State, the trial court found Cook remained

incompetent following competency restoration. ² It ordered Cook evaluated and two certificates of medical examination for mental illness to be prepared. The examining physicians were directed to provide opinions of whether Cook was mentally ill and, whether as a result of that mental illness, Cook was likely to cause serious harm to himself or others.

The examining physicians were Dana A. Butler, M.D., and Shiraj Vahora, M.D. Dr.

- unspecified (by history); depressive disorder, unspecified (by history); intellectual nos, ³

that Cook was mentally ill, likely to cause serious harm to himself, or likely to cause

serious harm to others. Dr. Butler, in fact, concluded the opposite, assessing Cook as:

presently is stable psychiatrically without presence of active psychosis or major mood disturbance. He denies hallucinations and does not express delusions. He denies desire to harm himself or others. He is compliant in taking prescribed medications. He does not meet criteria for inpatient psychiatric



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hospitalization.

2 The record does not indicate why the trial court found Cook to be incompetent. 3 See *In re D.S.*, No. 02-17-00446-CV, 2018 Tex. App. LEXIS 1782, at *8 (Tex. App. Fort Worth Mar. 8, 2018, no pet.) (mem. op.) . The Third Court of Appeals indicating a cluster of symptoms that do not clearly fit in any single diagnostic category. NOS is often a provisional diagnosis pending additional information or testing. *Servs.*, No. 03-14-00597-CV, 2015 Tex. App. LEXIS 2397, at *15-17 n.6 (Tex. App. Austin Mar. 13, 2015, psychiatric treatment with MHMR for med checks and counseling. Plans on living with

June 21 and 22, 2021.

Dr. Butler and six lay witnesses testified for the State. Cook presented no witnesses.

was an expert in psychiatry.

Dr. Butler testified via Zoom. On direct examination, he testified that Cook had disorder not otherwise specified in depressive disorder, not as specified in addition to his primary diagnos

convinced Cook had a psychosis, noting the patient history and record caused him to question the accuracy of the historic psychotic disorder and depressive disorder diagnoses. Dr. Butler said he agreed with the conclusion of the competency evaluation

by Dr. Nyberg 4 Dr. Butler, Dr. Nyberg did not list the historic psychotic disorder and depressive disorder

diagnoses in his evaluation. However, Dr. Butler acknowledged on questioning by the

State that Cook continued receiving treatment for the psychotic disorder and the

4 When asked by the State if, as a Butler also opined:

Cook does not have a current psychosis or depression or mood disorder that would contribute to him to be a danger to himself or others. Certainly his primary diagnosis is intellectual dysfunction, which does increase somewhat the chances of recidivism compared to other people charged with sexual crimes. But not having any further information about his prior history, danger to himself or others.



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Dr. Butler acknowledged he had not seen Cook unmedicated or outside a secure setting.

When asked about a previous episode in which Cook had said he saw the face of his

father and a voice telling him to kill himself, Dr. Butler explained:

actual dysfunction to misidentify see a dead relative encouraging them or telling them to go on. That is the

only isolated visual hallucination that he has had. What he told me is also consistent with his records. And the same goes with his . . . supposedly hearing or reportedly hearing a voice telling him to kill himself. He has thoughts. And what supports that is the fact that, to my knowledge, he had

never been treated for psychosis disorder.

continuing mental health treatment on an outpatient basis.

ix lay witnesses had seen Cook since his inpatient

hospitalization in February 2020. Two of these witnesses the complainant and an outcry

witness testified of the substance of the underlying sexual assault allegations. The the underlying sexual assault charge. Four of the lay witnesses described Cook as having

poor hygiene.

In addition, the Shallowater, Texas police officer who responded to the 2019 call

t he

Finally, a mental health officer with the Lubbock County Detention Center testified

that in a conversation with Cook in May 2019, he allegedly reported hearing voices telling

him to jump from the upper level of the jail.

In an order signed June 22, 2021, the trial court committed Cook to the North Texas

State Hospital for a period of inpatient treatment lasting no longer than ninety days. Cook

timely noticed this appeal.



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Analysis

Jurisdiction

We first take up the matter of our jurisdiction because it appears the ninety-day record before us whether Cook so presented. Nevertheless, we have jurisdiction. The expiration of the time for which Cook was ordered to receive mental health services does not require dismissal of the appeal for mootness. See *State v. K.E.W.*, 315 S.W.3d 16, 20 (Tex. 2010) (citing *State v. Lodge*, 608 S.W.2d 910, 912 (Tex. 1980)); *Moore v. State*, No. 07-10-00507-CV, 2011 Tex. App. LEXIS 6504, at *2 & n.1 (Tex. App. Amarillo Aug. 16, 2011, no pet.) (mem. op.) (noting collateral consequences exception to mootness doctrine).

Sufficiency of the Evidence

By his first issue by clear and convincing evidence of a mental illness. Section 15-a of the Texas on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such TEX. CONST. art. I, § 15-a. The relevant legislative enactment relating to temporary inpatient mental health services is found in Texas Health and Safety Code section 574.034(a), which reads in part:

The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that: (1) the proposed patient is a person with mental illness; and (2) as a result of that mental illness the proposed patient: (A) is likely to cause serious harm to the proposed patient; (B) is likely to cause serious harm to others; or (C) is: (i) suffering severe and abnormal mental, emotional, or physical distress; (ii) experiencing substantial mental or physical deterioration of the proposed function independently,



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which is exhibited by the

needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment.

TEX. HEALTH & SAFETY CODE ANN. disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual

emotional process, or judgment; or (B) grossly impairs behavior as demonstrated by

EX. HEALTH & SAFETY CODE ANN. § 571.003(14). Absent a

waiver not here applicable, the hearing must include competent medical or psychiatric

testimony. TEX. HEALTH & SAFETY CODE ANN. § 574.031(d- cross-examine

witnesses, the court shall proceed to hear testimony. The testimony must include

5

Under the clear and convincing standard, a reviewing court applies a heightened

standard of review to sufficiency of the evidence challenges. See *In re C.H.*, 89 S.W.3d

17, 25 (Tex. 2002). Clear and convincing evidence is that measure or degree of proof

which produces in the mind of the trier of fact a firm belief or conviction as to the truth of

the allegations sought to be established. *State v. K.E.W.*, 315 S.W.3d at 20. See also

State v. Addington, 588 S.W.2d 569, 570 (Tex. 1979) (per curiam) (requiring application

5 The court may also consider the testimony of a nonphysician mental health professional in addition to medical or psychiatric testimony. TEX. HEALTH & SAFETY CODE ANN. § 574.031(f). of clear and convincing standard in civil mental commitment cases). The statute also

requires the following:

To be clear and convincing under [§ 574.034(a)], the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to



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confirm: (1) the likelihood of serious harm to the proposed patient or others; or

TEX. HEALTH & SAFETY CODE ANN. § 574.034(d).

When interpreting a statute, we look to the literal text for its meaning. *Martin v.*

State, 635 S.W.3d 672, 677-78 (Tex. Crim. App. 2021). The plain meaning of the statute

Id. plain meaning, we read the statute in context and give effect to each word, phrase, clause,

and sentence if reasonably possible, and construe them according to any applicable

technical definitions and otherwise according to the rules of grammar and common

Lopez v. State, 600 S.W.3d 43, 45 (Tex. Crim. App. 2020). When the terms

used in a statute are general but possibly susceptible to a construction that would run

in its operation so as to

harmonize the statute with the Constitution, though, literally, it be susceptible of a broader

Maud v. Terrell, 109 Tex. 97, 100,

200 S.W. 375, 376 (1918). Here, the plain language of the statute, read in such a way to ensure it does not

conflict with the Texas Constitution, makes it essential that the State present expert

testimony that opines Cook is presently suffering from a mental illness. See *In re Best*

Interest & Prot. of K.G., No. 05-20-01053-CV, 2021 Tex. App. LEXIS 1297, at *13 (Tex.

App. Dallas Feb. 23, 2021, pet denied) (mem. op.) (citing *State v. K.E.W.*, 315 S.W.3d

at 20; *State ex rel. D.W.*, 359 S.W.3d 383, 386 (Tex. App. Dallas 2012, no pet.)). The

Constitution sets a floor that Cook cannot be committed as a person of unsound mind

except on competent medical or psychiatric testimony. TEX. CONST. art. I, § 15-a



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(emphasis supplied). We read the relevant statutory provisions with this in mind because a broad relevant statutes, we may look to standard dictionaries to determine the common usage.

Lopez to rely

WEBSTER S NEW TWENTIETH CENTURY DICTIONARY 1249 (1983). See also MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/on> (last visited March sound 6 medical or psychiatric

expert that Cook presently suffers from a mental illness.

Dr. Butler, the only mental health professional to testify at the hearing, disagreed contention that Cook presently suffers from a disease or condition that:

(A) substantially impairs his thought, perception of reality, emotional process, or judgment; or (B) grossly impairs his behavior as demonstrated by recent disturbed behavior. TEX. HEALTH & SAFETY CODE ANN. § 571.003(14). Instead, Dr. Butler opined at mental illness and intellectual dysfunction are legally separate concepts. See TEX.

HEALTH & SAFETY CODE ANN In re Commitment of J.A.A.,

No. 11-20-00142-CV, 2021 Tex. App. LEXIS 7497, at *3 (Tex. App. Eastland Sept. 9, 2021, no pet.) (mem. op.). 7 Further, Dr. Butler disagreed with the suggestion that Cook posed a substantial risk of serious harm to himself or others and disagreed that evidence 2020) were

caused by a mental illness. See TEX. HEALTH & SAFETY CODE ANN. § 574.034(d).

6 We believe it axiomatic that the competent-expert-testimony requirement of section 574.034(d) and (f) and section 574.031(d-1) means a qualified witness whose opinions prove reliable and relevant. See TEX. R. EVID. 702; Vela v. State, 209 S.W.3d 128, 131 (Tex. Crim. App. 2006) (trial judge as gatekeeper



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must make inquiries of qualification, reliability, and relevance before admitting expert testimony). In the present case, Cook stipulated that Dr. Butler was an expert in psychiatry. The record contains no inquiry

7 The statutory requirements for the temporary inpatient commitment of a proposed patient allegedly suffering mental illness differ from those authorizing commitment of a proposed resident allegedly presenting an intellectual disability. Compare Health and Safety Code section 574.034(a) (temporary inpatient commitment for mental illness) with Health and Safety Code section 593.052 (commitment for intellectual disability). The State urges it met the civil commitment standard because the statute merely

construction essentially, that it is unnecessary an expert opine the proposed patient suffers from a mental illness so long as the expert testifies about something would be
t on

competent medical or psychiatric testimony. TEX. CONST. art. I, § 15-a. In discussing the predecessor version of the statute, this Court observed this constitutional protection means the petitioning party must present expert medical or psychiatric testimony that the patient is mentally ill and in need of care or treatment. State for Interest & Prot. of

Ellenwood, 567 S.W.2d 251, 253 (Tex. Civ. App. requirement safeguards the rights of the proposed patient as provided by Texas

Constitution art. I, § 15- see also C.V. v. State, 616 S.W.2d 441, 443 (Tex. Civ.

App. Houston [14th Dist.] 1981, no writ) (holding in temporary civil commitment case

that because improperly admitted testimony from psychiatric commitment order could not be upheld) (citing TEX. CONST. art. I, § 15-a).

Even if the statute could be read in such a manner consistent with

proffered construction, we would hold in this appeal that no legally sufficient evidence illness. None of the lay



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and having poor hygiene, offered evidence creating more than surmise or suspicion that

Cook is a person presently suffering from mental illness. See TEX. HEALTH & SAFETY CODE

ANN. § 574.034(a)(1). The lay witnesses had not o his 2020 inpatient hospitalization and had no present basis for his condition or alleged overt acts. While we agree with the State that the finder of fact holds the power to

disregard the testimony of a physician or psychiatrist, the opinions of non-experts are not competent to fill the evidentiary lacuna. 8 When the evidence offered to prove a vital fact existence, the evidence is no more than a scintilla and, in legal effect, is no evidence.

See, e.g., Harrison v. State, No. 07-99-00259-CR, 1999 Tex. App. LEXIS 8332, at *6

(Tex. App. Amarillo Nov. 2, 1999, no pet.) (not designated for publication) (citing

Niswanger v. State, 875 S.W.2d 796, 799 (Tex. App. Waco 1994, no writ)).

along with the North Texas State Hospital medical

records show that [Cook] is a person diagnosed with both psychosis and depressive

evidence satisfies the burden of proof. The evidence shows the records Dr. Butler

reviewed contain diagnoses of others that Cook suffered from psychotic disorder and

depressive disorder prior to his release from the state hospital in 2020. But none of these

TEX. CONST. art. I, § 15-a; TEX. HEALTH & SAFETY CODE ANN. § 574.031(d-1). And as with

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A similar conclusion was reached by the Court of Criminal Appeals, albeit for another purpose, in Petetan v. State, 622 S.W.3d 321, 360 (Tex. Crim. App. 2021) (holding in capital murder case involving defense per Atkins v. Virginia, 536 U.S. 304 (2002), and its progeny, that appellant is intellectually disabled that Cook presently suffers from a mental illness. See TEX. HEALTH & SAFETY CODE ANN.

§ 574.034(a)(1).



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which contained the certificates of medical examination from Drs. Butler and Vahora, to which Cook objected. Rule of Evidence 201(b) permits a trial court to judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the sources whose accuracy cannot reason court intended to take judicial notice of the certificates, particularly given that they were would not discharge the hearing. TEX. HEALTH & SAFETY CODE ANN. § 574.031(d-1); In re C.V., 616 S.W.2d at

443 (holding the petitioner was required to present expert testimony once the certificates received opposition). Neither the certificate of medical examination prepared by Dr. Butler nor Dr. Vahora find that Cook was mentally ill, likely to cause serious harm to himself, or likely to cause serious harm to others.

We conclude the State failed to present competent, clear and convincing evidence disposition of that issue requires reversal and rendition, it is unnecessary to discuss

TEX. R. APP. P. 47.1. Conclusion

temporary mental health services. TEX. R. APP. P. 43.2(c).

Lawrence M. Doss Justice

