



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. AP-77,069

JOHN DAVID BATTAGLIA, Appellant

v.

THE STATE OF TEXAS

**ON REVIEW OF AN ARTICLE 46.05 COMPETENCY TO BE EXECUTED
HEARING FROM CAUSE NO. F01-52159-H
IN CRIMINAL DISTRICT COURT NO. 1
DALLAS COUNTY**

ALCALA, J., filed a dissenting opinion.

DISSENTING OPINION

At what point does a defendant's severe mental illness rise to the level that it renders him incompetent to be executed for capital murder under the applicable law in the Eighth Amendment to the federal Constitution and Texas statutory law? I conclude that under this applicable law, a defendant is incompetent to be executed when (1) he does not understand that he is to be executed and that the execution is imminent, or (2) he lacks a rational understanding of the reason for his execution due to delusions stemming from a severe

mental illness that place his awareness of the connection between his crime and his punishment in a context so far removed from reality that the punishment can serve no proper purpose. *See Panetti v. Quarterman*, 551 U.S. 930 (2007); *Ford v. Wainwright*, 477 U.S. 399 (1986); TEX. CODE CRIM. PROC. art. 46.05. Rather than apply this standard for competency determinations, this Court's majority opinion instead enacts a more burdensome standard for the defense as to the second prong. This more burdensome standard permits a finding of competency when a defendant is aware of a causal link between his crime and execution, even if his understanding is based on a significant impairment of his perception of reality due to a delusional disorder. In the instant case, in pertinent part, the defense contends that John David Battaglia, appellant, is incompetent to be executed because, even though he may acknowledge the State's reasons for seeking to execute him, he lacks a rational understanding of the reason for his execution due to a delusional disorder that significantly impairs his perception of reality. The defense argues that the trial court erred by relying on the conclusions of a sole expert who mistakenly failed to consider that, under the applicable law, a person is incompetent to be executed when his awareness of the link between his crime and impending execution is in a context so far removed from reality that he cannot understand the purpose or meaning of the punishment, despite the fact that he may demonstrate a factual understanding of the State's reasons for seeking to execute him. I agree with the defense that, because the sole expert who determined that appellant was competent mistakenly failed to consider the proper applicable law in reaching his conclusions, the trial court erred by

adopting that expert's conclusions. I would remand this case to the trial court for reconsideration of the evidence under the proper legal standard that requires an examination of whether the defendant's awareness of the reason for his impending execution is so distorted by his delusional thinking that the punishment can serve no proper purpose. Accordingly, I respectfully disagree with this Court's majority opinion's description of the applicable law in a manner that appears to permit a finding of competency based on a defendant's acknowledgment of a causal link between his conviction and punishment, in spite of his delusional beliefs, and its holding that improperly defers to the sole expert's conclusions that are premised on an incorrect standard for competency determinations. I, therefore, respectfully dissent. To explain my reasoning, I review the applicable law governing the competency-to-be-executed inquiry, and I then discuss the evidence in the record and the trial court's findings of fact and conclusions of law to show why the trial court's ruling fails to comport with the law.

I. The Applicable Law Sets Forth a Competency Standard That Must Be Applied in this Case

I respectfully disagree with this Court's overly restrictive view of the standard for evaluating a defendant's competency to be executed that imposes a more onerous burden on the defense in order to establish incompetency. While I agree with this Court's majority opinion's suggestion that Texas's competency-to-be-executed statute does not fully encompass all of the applicable law for competency determinations in this context, I part from the majority opinion with respect to the standard that should be applied. As to the

defendant's understanding of the reason for his execution, this Court's majority opinion's standard requires that a defendant demonstrate that he either (1) lacks an understanding of the fact that his execution will occur imminently, or (2) lacks a rational understanding of the reason for his execution, in the sense that he cannot understand the causal link between his crime and his punishment. Although I do not disagree with any of these aspects of the majority's standard, I believe that its standard is incomplete because, as I will explain further below in my discussion of the relevant law, the proper standard also requires that a defendant's awareness of the link between his crime and his punishment not be in a context so far removed from reality that his execution could serve no proper purpose. Because the Texas statute was enacted to codify the *Ford* decision, I review the requirements of *Ford* and Article 46.05 before I turn to my discussion of the *Panetti* decision that was decided about two decades after *Ford*.

A. The Texas Statute and *Ford* Disallowed the Execution of a Person Who, Due to Severe Mental Illness, Was Incompetent to Be Executed

In *Ford*, the Supreme Court held for the first time that the Eighth Amendment prohibits the execution of the insane. 477 U.S. at 401. In reaching that conclusion, the four-judge plurality opinion questioned whether there was any retributive value in executing a person “who has no comprehension of why he has been singled out and stripped of his fundamental right to life,” and it further observed that civilized societies would feel “abhorrence” at “killing one who has no capacity to come to grips with his own conscience or deity[.]” *Id.* at 408. The plurality opinion concluded that the Eighth Amendment barred

the execution of “one whose mental illness prevents him from comprehending the reasons for the penalty or its implications.” *Id.* at 417. Although recognizing that the Constitution would bar the execution of those who are unable to comprehend the reasons for or implications of the death penalty, the plurality opinion in *Ford* did not attempt to more precisely define the degree of severe mental illness that would fall within the Eighth Amendment’s prohibition against executing such individuals.

In his concurrence to the plurality opinion in *Ford*, Justice Powell sought to more clearly define the scope of the Eighth Amendment prohibition in this context. He observed that executing an insane person would “impose a uniquely cruel penalty” and would be inconsistent with the retributive purpose of the death penalty, which “depends on the defendant’s awareness of the penalty’s existence and purpose.” *Id.* at 421. Given this, Justice Powell opined that, to comply with the requirements of the Eighth Amendment, those who are subject to execution must “know the fact of their impending execution and the reason for it.” *Id.* at 422. He further explained that, “[i]f the defendant perceives the connection between his crime and his punishment, the retributive goal of the criminal law is satisfied.” *Id.* Accordingly, Justice Powell indicated that he would have held that the Eighth Amendment forbids the execution only of those individuals who are, by virtue of their insanity, “unaware of the punishment they are about to suffer and why they are to suffer it.” *Id.*

After *Ford*, Texas codified the ultimate holding of that decision in Code of Criminal

Procedure Article 46.05. Subsection (h) in Article 46.05 sets the standard for incompetency by providing that a defendant is incompetent to be executed when he does not understand (1) that he is to be executed and that the execution is imminent, and (2) the reason he is being executed. *See* TEX. CODE CRIM. PROC. art. 46.05(h). But, as this Court's majority opinion appears to recognize, the second prong in the statute is presently incomplete in that it fails to conform to the constitutional requirements for competency determinations that were later clarified by the Supreme Court's *Panetti* decision, which I discuss next.

B. Panetti v. Quarterman Clarified that a Defendant's Understanding of the Link Between His Crime and His Impending Execution Must Not Be Significantly Impaired By Delusions Stemming From Mental Illness

The Supreme Court's majority opinion *in Panetti* clarified the meaning of its plurality opinion in *Ford*. *Panetti* clarified that a defendant's understanding of the link between his crime and his impending execution may not be premised solely on his acknowledgment of the State's reasons for his execution, and it further required that his understanding of that link not be so distorted by delusional thinking that he could have no real understanding of the meaning or purpose of the punishment. Although this Court's majority opinion relies on *Panetti* for its analysis, and although it incorporates much of the analysis set forth in *Panetti*, I respectfully suggest that this analysis falls short of the constitutional requirement that a defendant's understanding of the link between his crime and his execution must not be in a context so far removed from reality that his execution can serve no proper purpose.

1. Panetti Required a Defendant's Rational Understanding of the Causal Link Between His Crime and Punishment to be Tethered to Reality

In *Panetti*, the Court clarified the meaning of *Ford* by holding that a person sentenced to death cannot be executed unless he has a rational understanding of the fact that he is going to be put to death and of the reason for his execution. *Panetti*, 551 U.S. at 958-59. The Court explained that such a formulation of the standard was consistent with the reasoning and holding in *Ford*, in which the Court had determined that it would serve no retributive purpose to execute an individual who lacks comprehension of why he has been singled out for the death penalty or who has no capacity to come to grips with his own conscience. *Id.* at 957 (citing *Ford*, 477 U.S. at 409-10).

Regarding the evidence in Panetti's case, the Supreme Court observed that there was "much in the record to support the conclusion that [he] suffers from severe delusions." *Id.* at 955-56.¹ Nevertheless, the federal district court had rejected Panetti's claim that he was incompetent to be executed by reasoning that the Eighth Amendment requires no more than that a defendant know the fact of his impending execution and the stated reason for the execution, and the Fifth Circuit Court of Appeals affirmed that determination. *Id.* at 942. The Supreme Court reversed, holding that the lower courts had erred by employing an

¹ In assessing the evidence in that case, the Court observed that one expert had opined that Panetti had a "genuine delusion" involving his understanding of the reason for his execution. *Panetti v. Quarterman*, 551 U.S. 930, 954 (2007). According to that expert, although Panetti claimed that he understood that the State wanted to execute him for his murders, he "believe[d] in earnest that the stated reason is a 'sham' and the State in truth wants to execute him" for some other reason unrelated to his crime—to stop him from preaching. *Id.* at 954-55. Although other experts had resisted the conclusion that Panetti was incompetent because he appeared capable of understanding certain concepts and, "at times, [was] clear and lucid," ultimately the Court concluded that there was significant evidence that Panetti was delusional regarding the reasons for his execution. *Id.*

approach that was “too restrictive to afford a prisoner the protections granted by the Eighth Amendment.” *Id.* at 956-57. The Court reasoned that the lower courts’ standard that treated Panetti’s delusional belief system as irrelevant so long as he was able to articulate the State’s proffered reason for his punishment was inconsistent with the reasoning of *Ford*. *Id.* at 958. It explained that the *Ford* plurality and concurring opinions “nowhere indicate that delusions are irrelevant to ‘comprehen[sion]’ or ‘aware[ness]’ if they so impair the prisoner’s concept of reality that he cannot reach a rational understanding of the reason for the execution.” *Id.* The Court concluded that, contrary to the lower court’s reasoning, “[a] prisoner’s awareness of the State’s rationale for an execution is not the same as a rational understanding of it” and that “*Ford* does not foreclose inquiry into the latter.” *Id.* at 959. The Court thus rejected the lower court’s standard as being incompatible with the requirements of the Eighth Amendment. *Id.* It explained that Panetti was entitled to consideration of his argument that “he suffers from a severe, documented mental illness that is the source of gross delusions preventing him from comprehending the meaning and purpose of the punishment to which he has been sentenced.” *Id.* at 960. The Court determined that a defendant’s delusional beliefs regarding the link between his crime and his punishment could put his understanding of that link in a context so far removed from reality that he could not possibly have a rational understanding of the purpose for his punishment or its implications. *Id.* at 960. The Court said,

Gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from

reality that the punishment can serve no proper purpose. It is therefore error to derive from *Ford*, and the substantive standard for incompetency its opinions broadly identify, a strict test for competency that treats delusional beliefs as irrelevant once the prisoner is aware the State has identified the link between his crime and the punishment to be inflicted.

Id.

In announcing its holding, the Court in *Panetti* cautioned that it was “not attempt[ing] to set down a rule governing all competency determinations.” *Id.* at 960-61. The apparent reason for this lack of a more precise rule was the procedural posture of *Panetti*’s case—the Court explained that the record was “not as informative as it might be,” given that the lower court’s factual findings had necessarily been colored by the improper standard of review.² Given the undeveloped state of the record, the Court indicated that it would be “difficult to amplify [its] conclusions or to make them more precise” at that juncture. *Id.* at 961. The Court remanded the case for further proceedings. *Id.* at 962. The Court noted that, on remand,

² With respect to this matter, the Court stated,

In overseeing the development of the record and in making its factual findings, the District Court found itself bound to analyze the question of competency in the terms set by Circuit precedent. It acknowledged, for example, the “difficult issue” posed by the delusions allegedly interfering with petitioner’s understanding of the reason behind his execution, but it refrained from making definitive findings of fact with respect to these matters[.]. . . . The District Court declined to consider the significance those findings might have on the ultimate question of competency under the Eighth Amendment. And notwithstanding the numerous questions the District Court asked of the witnesses, it did not press the experts on the difficult issue it identified in its opinion. The District Court, of course, was bound by Circuit precedent, and the record was developed pursuant to a standard we have found to be improper. As a result, we find it difficult to amplify our conclusions or to make them more precise.

Panetti, 551 U.S. at 961 (record citations omitted).

“[t]he conclusions of physicians, psychiatrists, and other experts in the field will bear upon the proper analysis.” *Id.* In addition, it stated, more generally, that “[e]xpert evidence may clarify the extent to which severe delusions may render a subject’s perception of reality so distorted that he should be deemed incompetent.” *Id.*

The *Panetti* Court’s reasoning makes clear that a person is incompetent to be executed if he “suffers from a severe, documented mental illness that is the source of gross delusions preventing him from comprehending the meaning and purpose of the punishment to which he has been sentenced.” *Id.* at 960. I therefore agree with the Eleventh Circuit Court of Appeals’s observation in a recent case that it is “not enough for the prisoner to merely recite the proffered reason for his execution. Instead, *Panetti* tells us we must look at the prisoner’s own ‘concept of reality,’—particularly as it relates to the relationship between his crime and his execution.” *Madison v. Comm’r Alabama Dep’t of Corr.*, 851 F.3d 1173, 1184 (11th Cir. 2017). If the prisoner does not rationally understand the connection between the crime he committed and the punishment he is to receive due to his delusional thought processes stemming from severe mental illness, then the “‘punishment can serve no proper purpose’ and cannot be carried out.” *Id.* at 1177 (citing *Panetti*, 551 U.S. at 960).³

³ The Eleventh Circuit in *Madison* concluded that a defendant with dementia resulting from a stroke who had no memory of committing the capital offense and believed he had not committed any crime was incompetent to be executed under *Panetti*. *Madison v. Comm’r Alabama Dep’t of Corr.*, 851 F.3d 1173, 1189 (11th Cir. 2017). The Court explained its reasoning by stating, “A person cannot rationally understand why he is being killed if, according to his ‘concept of reality,’ he never committed a crime. . . . [D]ue to his dementia and related memory impairments, Mr. Madison lacks a rational understanding of the link between his crime and his execution. . . . A person does not rationally understand his punishment if he is simply blindly accepting what he has been

I note here that several courts have suggested that the Supreme Court in *Panetti* left open the question before us today, which is how to define and apply the concept of “rational understanding” in this context. *See Madison*, 851 F.3d at 1184 (“Although *Panetti* identifies the concept of ‘rational understanding’ as the focus of the competency inquiry, the Court’s opinion does not define the term.”); *Ferguson v. Sec’y, Fla. Dep’t of Corr.*, 716 F.3d 1315, 1318 (11th Cir. 2013) (“The bottom line of the *Panetti* decision is that there is not yet a well-defined bottom line in this area of the law.”). I agree with those courts’ assessments that *Panetti* left open some questions for the lower courts to resolve regarding precisely how the rule of that case should be applied in practice. However, *Panetti* did not leave unanswered the substantive question of when a severely mentally ill, delusional defendant should be spared the death penalty due to his lack of a rational understanding of the reason for his punishment. As I have explained above, this aspect of *Panetti* plainly prohibits the execution of a severely mentally ill person whose gross delusions about the link between his crime and impending execution are on a basis untethered from reality so that his punishment can serve no proper purpose.

2. The Majority Opinion’s Standard Permits A Finding of Competency Based on a Defendant’s Awareness of a Mere “Causal Link,” As Long as that Awareness is Not Based Solely on a Recitation of the State’s Reason for Seeking to Execute Him

Although this Court’s majority opinion properly recognizes that, to comply with the Eighth Amendment, Article 46.05 must be interpreted in light of *Panetti*’s “rational

told.” *Id.* (citations omitted).

understanding” language, the Court’s description of the applicable standard does not fully comport with the reasoning of that case. The portion of the majority opinion’s standard that aims to effectuate the holding of *Panetti* is the requirement that a defendant comprehend that there is a “causal link” between his conviction and his imminent execution, beyond merely acknowledging the State’s articulated rationale. The Court explains that a prisoner is competent to be executed under *Panetti* and Article 46.05

if he knows he is to be executed by the State, he knows the reason he is to be executed, he knows that the execution is imminent, and, despite any delusional beliefs or other mental illness he may have, and despite the fact that he may deny having committed the capital offense, he comprehends that there is a ‘causal link’ between his capital offense and his imminent execution, beyond merely identifying the State’s articulated rationale for the execution.⁴

The majority opinion’s standard is functionally the same as the one that was rejected in *Panetti*. As explained above, *Panetti* determined that a prisoner is incompetent to be executed if, in spite of his awareness of a causal link between his crime and his punishment, he suffers from gross delusions that put his awareness in a context so far removed from reality that the punishment can serve no proper purpose. *See Panetti*, 551 U.S. at 958-60. Here, the majority opinion’s formulation of the competency standard omits this aspect of *Panetti*’s reasoning, and thus it appears to permit the execution of a person who is able to identify a causal link between his conviction and his punishment through a delusional rationale. Although the majority opinion acknowledges that a defendant’s understanding of this causal link must go beyond merely reciting the State’s articulated rationale for executing

⁴ Majority opinion, slip op., at 47.

him, its standard does not make clear how much farther this understanding must go, nor does it elaborate on how a delusional defendant might demonstrate that he lacks such an understanding.

Uncertainty surrounding the proper competency-to-be-executed standard following *Panetti* is understandable, given this Court's previous statements that appeared to minimize the substantive importance of that decision. In *Green v. State*, this Court's majority opinion indicated that *Panetti* "merely reiterated the established requirements of *Ford*." 374 S.W.3d 434, 443 (Tex. Crim. App. 2012). This Court stated, "Our reading of *Panetti* does not find a mandate regarding how to weigh any particular evidence; instead, we read *Panetti* as instructing that evidence of delusions may not, categorically, be deemed irrelevant. Therefore, we hold that *Panetti* merely clarifies the *Ford* standard for determining whether an inmate is competent to be executed." *Id.*⁵ These statements in *Green* could be misconstrued as minimizing the importance of *Panetti*'s illumination of the "rational understanding" requirement that was highlighted in that case under the particular facts the Supreme Court was considering in its review of the Fifth Circuit's holding that *Panetti* was competent based on his ability to acknowledge the State's rationale for his impending

⁵ Other courts have made similar observations. *See, e.g., Ferguson v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 1315, 1318 (11th Cir. 2013) ("*Panetti* did not abrogate or otherwise reject the awareness standard articulated by Justice Powell [in *Ford*], nor did it impose a new, more rigorous standard for assessing competency to be executed. . . . What the Supreme Court rejected in *Panetti* was an overly narrow interpretation of *Ford* that deems a prisoner's mental illness and delusional beliefs irrelevant to whether he can understand the fact of his pending execution and the reason for it.>").

execution. *Panetti*, 551 U.S. at 959. The Supreme Court's holding and rationale in *Panetti* to decide the issue in that case provides great insight into the application of the broader description of the law on competency that had been set forth by the plurality opinion in *Ford*.

I note here that, to the extent that a competency determination requires an assessment of whether a defendant is suffering from a severe mental illness, it is appropriate to consider the current medical framework in making such a determination. *See, e.g., Moore v. Texas*, 137 S. Ct. 1039 (2017) (requiring determination of whether a person is intellectually disabled so as to render him ineligible for the death penalty by considering current medical framework). Part of the Supreme Court's rationale in *Moore* was that, in making such determinations, courts should not resort to stereotypes about the intellectually disabled, but should instead look to current medical/clinical appraisals to determine whether a particular person meets the diagnostic criteria for intellectual disability. *Id.* at 1052. Applying that same principle in this related context, I would further hold that the assessment of competency to be executed should look more closely to the current medical framework for assessing the existence of severe mental illness with delusional aspects that would prevent a person from having a rational understanding of his impending execution. Such an approach would be consistent with the Supreme Court's statements in *Panetti*, in which it instructed the trial court on remand to consider the "conclusions of physicians, psychiatrists, and other experts in the field[.]" *Panetti*, 551 U.S. at 962; *see also id.* (explaining that "[e]xpert evidence may clarify the extent to which severe delusions may render a subject's perception of reality so

distorted that he should be deemed incompetent”). I would expressly hold that the inquiry should be focused more closely on whether the defendant has a current medical diagnosis of a severe mental illness with delusional aspects and on whether or to what extent that illness has affected his ability to fully and rationally comprehend his conviction and sentence.

To resolve any conflict between the Eighth Amendment and this Court’s current standard for evaluating competency to be executed, I would hold, consistent with the reasoning of both *Ford* and *Panetti*, that a defendant lacks a rational understanding of the reason for his punishment if he suffers from gross delusions stemming from a severe mental illness that place his awareness of the link between his crime and his punishment in a context so far removed from reality that the punishment can serve no proper purpose. *Id.* at 960. Under these circumstances, as the Supreme Court observed in *Ford*, executing such an individual would be inherently cruel and could serve no proper retributive purpose, and thus would violate the Eighth Amendment. *See Ford*, 477 U.S. at 401. Furthermore, I would expressly hold that this inquiry into the extent of a defendant’s delusional thinking as it relates to his rational understanding of the reason for his punishment requires more than the defendant’s factual awareness that he was convicted of capital murder and sentenced to death for that offense so that his awareness is not based on a delusional rationale untethered to reality.

II. Remand to Trial Court is Appropriate for It to Apply the Proper Standard

Having described the appropriate standard for evaluating a defendant’s competency

to be executed above, I now explain why I conclude that the trial court's failure to apply that standard in this case renders its ruling unworthy of deference by this Court. In contrast to the majority opinion that upholds the trial court's ruling, I conclude that the trial court erred by mistakenly applying an incorrect legal standard for evaluating appellant's competency and that this flaw necessarily tainted the trial court's ruling in this case. As I demonstrate below, the trial court was under the mistaken impression that Article 46.05 is adequate to afford all the protection that is required under the Eighth Amendment as long as evidence of delusions is considered, and thus it misunderstood the applicable law that it used as the basis for making its findings of fact and conclusions of law. Then, in finding appellant competent, the trial court relied almost exclusively on the opinion of Dr. Womack, who was the sole expert out of the four experts who formed opinions in this case to find appellant competent, but the record shows that Dr. Womack reached his conclusions by applying an improper standard that did not fully incorporate *Panetti's* requirement that a defendant have a "rational understanding" of the reason for his execution. In light of these flaws in the trial court's ruling, I would not defer to that ruling at this juncture but I would instead remand this case for the trial court to clarify its findings and conclusions in light of the proper standard.

A. Comments Made By Trial Court During Competency Hearing Indicate That It Applied an Incorrect Standard

I first review several comments made by the trial judge during the competency hearing which suggest that he was mistaken in believing that Article 46.05 by itself is an adequate standard for evaluating a defendant's competency to be executed. These statements also

reflect the trial judge's mistaken impression that *Panetti* is largely an unclear decision which stands for nothing more than the proposition that evidence of delusions must not be categorically ignored in assessing a defendant's competency to be executed.

One of the trial judge's two focuses on the law to apply was on the application of Article 46.05 to this case. At one point, for example, while questioning Dr. Proctor, the trial court asked, "But [appellant] is in your opinion competent under 46.05, but [] his delusions, in your opinion, are such that he doesn't have a factual understanding of what he did, an accurate factual understanding of what he did?" The judge's questions suggest that he appeared to be focused on the portion of Article 46.05 addressing whether the defendant understood "the reason he or she is being executed." TEX. CODE CRIM. PROC. art. 46.05(h)(2).

The second of the judge's two focuses was on his perception that the *Panetti* decision required him to consider evidence of the defendant's delusions. The trial judge suggested that *Panetti* stood only for the proposition that he could not find appellant's delusions wholly irrelevant because the case was otherwise unclear about its competency standard. The trial judge stated,

I read *Panetti* many times, and I read it very carefully. *Panetti* that hold [sic] that if the defendant lacks a rational understanding, that he's necessarily not competent to be executed. That's just not what—that's just not what the Supreme Court said. The holding is that once the prisoner meets the statutory definition of [Article] 46.05, I can't treat any delusional beliefs as irrelevant. That's the holding of the case. And if there's another Eighth Amendment analysis that has to be done, I'm going to do my very best to make that Eighth Amendment analysis. . . . But, you know, it explicitly says in *Panetti* that we

reject the standard followed by the court of appeals, and we do not attempt to set down the rule governing all competency determinations. And that's—that's very clear in *Panetti*.

And so, you know, we can argue what our interpretation is, and I'm willing to listen to that all day long, but the matter is there's not a determination. So I'll do my best and the courts of appeals above me are going to do their best. But there's no point in arguing about what *Panetti* stands for because it's clear that it's unclear.

These statements on the record from the trial judge suggest that he was operating under the mistaken impression that *Panetti* did not significantly alter the Article 46.05 competency requirements in any way. The trial judge also suggested that *Panetti* did not hold that a defendant must have a rational understanding of the reason for his execution, but that is precisely what the Supreme Court held in that case. My concerns regarding the trial court's application of an erroneous standard are further reflected in the trial court's findings of fact and conclusions of law, which I will discuss next.

B. The Trial Court's Findings of Fact and Conclusions of Law Reflect That They Are Tainted By An Improper Standard

In its findings of fact and conclusions of law, the trial court correctly observed that a defendant must have a rational understanding of the reason for his execution, but at no point did it attempt to define what rational understanding means or explain how it was applying that term to this case. It is thus unclear from the face of the trial court's findings and conclusions whether the trial judge considered the "rational understanding" language from *Panetti* to be an essential part of the competency inquiry, or whether he instead considered that language to be merely redundant of *Ford*'s requirement that a prisoner "know

the fact of [his] impending execution and the reason for it.” *Ford*, 477 U.S. at 422 (Powell, J., concurring).

To further complicate matters, the trial court made a finding that the three experts who determined that appellant was incompetent to be executed—Dr. Mosnik, Dr. Allen, and Dr. Proctor—all employed an “incorrect” standard for assessing his competency, but the trial court’s findings fail to particularly identify the flaw in the standard employed by those experts.⁶ A review of those experts’ conclusions, however, shows that they all found appellant incompetent to be executed by reasoning that appellant, although factually aware of the reason his execution, lacks a rational understanding of that matter due to a delusional disorder that significantly distorts his concept of reality.⁷ Although the trial court declared

⁶ On page 8 of the trial court’s findings of fact and conclusions of law, the trial court stated, “[T]he Court believes that three of [the experts] applied an incorrect standard when applying *Panetti* and for this reason and the reasons cited below the Court does not rely on these opinions.” The trial court continued, “Three of the four experts opined the Defendant ‘incompetent’ under *Panetti* because of a persecutory delusional disorder. But, in evaluating that persecutory delusional disorder they used an incorrect legal standard that was provided by the defense counsel.”

⁷ For example, in her written report, Dr. Mosnik concluded that appellant “does not demonstrate having a rational understanding of the punishment that he is about to suffer, in that he believes he is to be executed to prevent him from disclosing damaging information he believes he possesses against those he believes are persecuting him. Although he has factual awareness that an execution date has been scheduled and is imminent . . . he does not believe that he will be executed because of his responsibility in committing the crime, due to the presence of his illogical, fixed, and firmly held delusional belief system.” Dr. Mosnik found no evidence of malingering based on her administration of several psychological testing assessments. Dr. Allen’s written report observed that appellant expressed “a complex delusional system involving conspiracies” and, as a result, he is not rationally aware of the reason for his execution. Dr. Allen opined that appellant was not malingering because, among other factors, his delusions were persistent in that they were present prior to his trial and have continued consistently since then, and have “increased in intensity.” Dr. Allen opined that it would take “extraordinary energy to consistently present” consistent delusional thinking over a long period of time if it were not genuine. Dr. Proctor concluded that appellant is “severely mentally

these conclusions to be the product of an “incorrect” standard, on the contrary, these experts’ analyses were consistent with the requirements of Article 46.05, *Ford*, and *Panetti*. Because the trial court identified these experts as applying the wrong standard when they in fact applied the correct standard, the only logical conclusion that can be drawn from this is that the trial court actually applied an incorrect standard. If the trial court disregarded the opinions of these three experts primarily because it was confused about the proper standard, then this fact alone would justify remanding the case for the court to clarify its findings and conclusions in light of the proper standard.

The remainder of the trial court’s findings of fact and conclusions of law further reflect that it failed to fully incorporate *Panetti*’s “rational understanding” requirement into the standard for evaluating appellant’s competency to be executed. Much like the analysis found objectionable by the Supreme Court in *Panetti*, here the trial court’s findings and conclusions determined that appellant was competent based in part on appellant’s understanding that if someone killed two people and he was convicted of killing those two people, then that killer could properly receive the death penalty. The trial court stated,

The Court finds wholly credible the opinions and conclusions of Dr. James Womack, that the Defendant possesses an accurate understanding that he was convicted of murdering his two daughters. He understands that his execution

ill due to a complicated persecutory delusional system” and that his understanding of the reason for his execution is thus “irrational, as he views it as stemming [from] a vast, complicated conspiracy against him that is part of a large, multifaceted cover-up, as opposed to being due to the commission of the capital murder.” Dr. Proctor also opined that appellant was not malingering based both on his own administration of the M-FAST test and appellant’s performance on the psychological assessments administered by Dr. Mosnik.

date is December 7, 2016. He understands that someone who killed two girls and was convicted of such a crime would receive the death penalty. He has told several different versions of his offense, admitting all or some culpability and his denials are inconsistent. The Court accepts as conclusive the opinion of Dr. Womack that the defendant is competent for execution.

This determination that appellant has a rational understanding of the reason for his execution, in part, because he recognized that a hypothetical person who commits capital murder could lawfully be subjected to the death penalty for that offense ignores the central focus of a proper competency inquiry that must address whether a defendant has a rational understanding of the reason for his execution in his own case. *See Panetti*, 551 U.S. at 960. That he may understand that the State would be justified in imposing the death penalty against someone else for the same type of offense is wholly immaterial to the proper inquiry. This assessment by the trial court further reveals that it applied the incorrect standard to appellant's competency claim and thus its ruling was tainted by that error.

C. The Sole Expert Who Determined that Appellant Was Competent to be Executed Did Not Employ the Correct Standard

Because the trial court relied almost exclusively on the opinion of Dr. Womack in reaching its conclusion that appellant is competent to be executed, I will next address the evidence from Dr. Womack which reflects that he was also mistaken regarding the substantive standard governing the competency inquiry in this case.

Dr. Womack's written report focused primarily on the statutory elements set forth in Article 46.05 without considering the "rational understanding" requirement in *Panetti*. Dr. Womack opined that appellant is competent to be executed "per Texas Code of Criminal

Procedure Article 46.05(h)” because he “understands he is to be executed, that the execution is imminent, and the reason he is being executed.” Dr. Womack further explained, “Historical comments by [appellant] show he has long understood the criteria for competence to be executed, and his interview comments illustrate he understood them on both assessment dates.” These observations by Dr. Womack in his written report demonstrate his emphasis on appellant’s factual awareness of the State’s justification for seeking to execute him, but at no point did Dr. Womack discuss the concept of “rational understanding” or suggest that this was an essential component of the legal inquiry.

This same theme was repeated during Dr. Womack’s testimony at the competency hearing. At several points during his testimony, Dr. Womack emphasized that appellant has a “factual understanding” of the requirements for competency to be executed under Article 46.05, thus suggesting that he viewed this as the central requirement for a finding of competency. At one point, with respect to the evidence of appellant’s delusions, Dr. Womack stated, “But in talking about the factual standard at hand [under Article 46.05], there was no indication that there was any distorted thinking that was preventing him from understanding those three [statutory] components.” Later, Dr. Womack agreed with the trial court’s suggestion that appellant was factually aware of the reason for his execution, consistent with the requirements of Article 46.05. Dr. Womack stated, “Yes, I have quotes of him [in my written report] that illustrate his factual understanding of the elements under question.” At another point during the hearing, Dr. Womack stated with respect to appellant’s

ability to discuss the elements of Article 46.05 and the theory of incompetency underlying his case, “[T]hat’s clear support for the Texas Code of Criminal Procedure criteria.” Thus the record reveals that Dr. Womack’s focus in his testimony was on whether appellant met the statutory criteria in Article 46.05.

At one point, the State asked Dr. Womack to directly address the concept of rational understanding, but his testimony reveals that he believed that concept could be determined by evidence that the defendant understood the State’s reasons for seeking to impose the death penalty and that he was intelligent enough to comprehend the law on competency. Dr. Womack indicated that, in his view, appellant had demonstrated his rational understanding through his agreement with Dr. Womack’s suggestion that whoever was responsible for killing his daughters could theoretically properly be subjected to the death penalty.⁸ At another point during the hearing, the State again asked Dr. Womack about his understanding of the relevant standard. The following exchange occurred:

State: In your second report, you talk a lot about how he understands the legal standard. He actually articulated to you why we’re here having this proceeding and what the

⁸ As to this matter, the following exchange occurred:

State: The very last sentence of your report . . . you note that he admitted, technically, yes, if a person is—does commit capital murder, the State has the right to—that would justify their execution, correct?

Dr. Womack: Yes ma’am.

State: Did that demonstrate to you that he has a rational understanding between the charge of capital murder and being convicted of it and then the State actually carrying out the execution for that offense?

Dr. Womack: Yes ma’am.

standard is and why he thinks that he's getting this hearing, correct?

Dr. Womack: Correct.

State: Is it fair to say that that's a pretty rational understanding of what is required under the law to be competent?

Dr. Womack: According to the Texas Code of Criminal Procedure, I think it's clear evidence that he has a factual understanding.

State: Okay. And what about a rational understanding?

Dr. Womack: Well—

State: That's kind of the crux of the question because I know the doctors have all kind of looked at this from that perspective.

Dr. Womack: Yes. And I think he has a rational understanding supported by the questions queried of me by the court earlier, that it—the questions and his response to the questions indicate that it is more likely than not that he does not have a delusional disorder.

Here, Dr. Womack's mistaken focus appeared to be on appellant's intellectual ability to understand the law on competency as his basis for finding that appellant did not have a delusional disorder, as compared to whether he had a rational understanding of the purpose of his impending execution due to his commission of the offense.

In sum, the record of the proceedings below reflects that the lower court applied an incorrect standard for evaluating appellant's competency to be executed, and, as such, it is necessary to remand this case for further proceedings. Here, the trial court rejected the opinions of three experts by reasoning that their opinions were based on an incorrect standard, but, as explained above, the record shows that the trial judge was actually mistaken about the proper standard. The trial court relied almost exclusively on the opinion of Dr. Womack, but a close review of the record reveals that Dr. Womack's opinion was untethered

from the requirements of *Panetti*, which dictates that the focus of the competency inquiry must be on whether a defendant has a rational understanding of the purpose for his punishment. *See Panetti*, 551 U.S. at 958. Because it adopted Dr. Womack's opinion that was reached through application of an improper legal standard while rejecting the opinions of three other experts who reached contrary conclusions that were reached through a proper legal standard, this Court should not defer to the trial court's ruling. This Court should not permit the execution of a person who may be categorically exempt from the death penalty due to his severe mental illness in the name of deference to the lower court's ruling, where that ruling appears to have been based on a flawed interpretation of the law. Under these circumstances, I cannot agree with the majority opinion's decision to uphold the trial court's ruling without first giving the trial judge the opportunity to clarify his findings and conclusions in light of the proper standard.

IV. Conclusion

The record of the proceedings below suggests that the expert witnesses and the trial court did not apply a consistent legal standard for determining appellant's competency to be executed. Accordingly, I would, at this juncture, simply clarify that the proper standard must take into account *Panetti's* "rational understanding" requirement, which prohibits the execution of a defendant who suffers from severe delusions that render him unable to rationally understand the meaning and purpose of his punishment. I would not hold that appellant is competent at this stage as this Court's majority opinion does, but I would instead

remand this case to the trial court for further proceedings that apply a consistent and proper legal standard for deciding whether appellant is competent to be executed. I, therefore, respectfully dissent.

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