Abated and Remanded and Order filed July 21, 2020.

In The

Fourteenth Court of Appeals

NO. 14-18-00042-CR

JEREMY ALEXANDER BAUTISTA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 56th District Court
Galveston County, Texas
Trial Court Cause No. 15-CR-2073

ABATEMENT ORDER

Appellant Jeremy Alexander Bautista challenges his conviction for aggravated sexual assault of a child. *See* Tex. Penal Code § 22.021. Appellant raises three issues in his appeal, but we only address two at this time. Appellant contends in his third issue that the evidence presented at trial was legally insufficient to support his conviction. We overrule this issue because, when viewed under the appropriate standard of review, the evidence is legally sufficient to support appellant's conviction. Appellant argues in his first issue that the trial

court abused its discretion when it failed to sua sponte conduct an informal inquiry into his competency to stand trial. Because we conclude the record contains a suggestion from a credible source that appellant may be incompetent, we hold that the trial court abused its discretion when it failed to conduct an informal inquiry into appellant's competency to stand trial. We therefore sustain appellant's first issue, abate appellant's appeal, and remand to the trial court for further proceedings consistent with this order.

BACKGROUND

We summarize the facts through the standard of legal-sufficiency review, "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Johnson v. State*, 364 S.W.3d 292, 293–294 (Tex. Crim. App. 2012) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The jury is the sole judge of the credibility of witnesses and the weight to afford their testimony. *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). The jury may reasonably infer facts from the evidence presented, credit the witnesses it chooses, disbelieve any or all of the evidence or testimony proffered, and weigh the evidence as it sees fit. *See Canfield v. State*, 429 S.W.3d 54, 65 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd). When the record supports conflicting inferences, the reviewing court presumes the trier of fact resolved the conflicts in favor of the State and defers to that determination. *See Marshall v. State*, 479 S.W.3d 840, 845 (Tex. Crim. App. 2016) ("We defer to the jury's finding when the record provides a conflict in the evidence."); *Jackson v. State*, 495 S.W.3d 398, 405 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd). We do not become a thirteenth juror by re-evaluating the weight and credibility of the evidence or substituting our judgment for that of the fact-finder. *Williams v. State*,

235 S.W.3d 742, 750 (Tex. Crim. App. 2007); *Reed v. State,* 158 S.W.3d 44, 46 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd). Our duty as a reviewing court is to ensure that the evidence presented can actually support a conclusion that the defendant committed the crime. *See Williams,* 235 S.W.3d at 750. We will uphold the verdict unless we determine any rational factfinder would have a reasonable doubt as to any essential element. *Laster v. State,* 275 S.W.3d 512, 518 (Tex. Crim. App. 2009).

The complainant, S.W., was ten years old when she testified during appellant's trial. The complainant's biological mother is M.B. The complainant testified that, when she was four or five years old, she lived with her mother, her brother, and appellant. Appellant is M.B.'s boyfriend. The complainant testified that she left her mother's apartment when she was seven or eight years old and now lives with her aunt and uncle.

The complainant testified that her mother worked every day. According to the complainant, appellant watched her and her brother while their mother worked. The complainant testified that appellant did horrible things to her. According to the complainant, appellant put his private part in her mouth, made her touch his private, and he touched her "[i]n my front private and my back private" with his private. The complainant continued that when appellant touched her front private with his private, it went into her front private. According to the complainant, when appellant put his private in her back private and in her mouth, it hurt sometimes. The complainant testified that the abuse started in kindergarten and ended when she left the house. According to the complainant, the assaults happened when her mother was not home and there were no other grown-ups in the house. The complainant said that appellant did it more than twenty times.

The complainant eventually told her aunt, A.R., what happened. The police

were called immediately. The complainant went to the hospital the same day and she was examined the next day.

Y.M. is the complainant's paternal grandmother. M.B. allowed Y.M. to see the children, even after M.B. had broken up with Y.M.'s son. A few days before the complainant made her outcry, Y.M. got a call from M.B. asking if she could pick up the children for the weekend. Y.M. picked the children up the following day from their apartment and took them to her house.

Y.M. testified that she always has the children take a shower or bath when they are visiting. That night, the complainant refused, which Y.M. thought was unusual. The complainant did not take a shower or bath that night, but she did the following day. Y.M. said that the complainant's aunt, A.R., was with the complainant when she took a bath. A.R. called Y.M. into the bathroom, where she saw the complainant sitting in the tub, naked, and covering her genitals. Y.M. called a friend and then called the police. According to Y.M., the complainant was seven years old at the time of her outcry. After making the initial police report, Y.M. took the complainant to UTMB for a sexual assault exam.

A.R. testified that she is the complainant's aunt. A.R. testified that the complainant usually showered before bed, but she did not want to shower the night before she told A.R. about appellant sexually abusing her. The complainant took a bath the next day. A.R. testified that she went into the bathroom to put out a towel and clean clothes for the complainant. When she went into the bathroom, A.R. saw the complainant sitting down on the tub with her legs open and her private part exposed. A.R. saw that the complainant had a red rash in the middle of her vagina.

The complainant then told A.R. that appellant had done "nasty stuff" to her. A.R. asked the complainant what she meant, and the complainant responded: "[n]asty stuff like grownups do." The complainant then said that appellant "put his

D inside of me." When A.R. asked the complainant what she meant by "D", the complainant whispered that she did not want to say the word, and then said "dick." When asked how the complainant looked while she was telling her this, A.R. said that she looked sad and scared. The complainant told A.R. that, by "inside me," she meant "front and back."

Angela Smith is the UTMB emergency room nurse who performed a sexual assault examination on the complainant. Smith explained that she did not collect a sexual assault kit on the complainant because the examination occurred outside the 96-hour window for evidence collection. Smith noted that the complainant was shy during the examination and understood the importance of being truthful. The complainant told Smith that she was there because her mother's boyfriend was touching her when her mother was at work. The complainant said that appellant touched her where she pees and poops. According to Smith, the complainant said "nasty stuff" happened. The complainant described it as what "boyfriends and girlfriends do." The complainant then spelled out "s-e-x." Smith performed a head-to-toe examination on the complainant and she saw redness on the outer part of the complainant's vagina. Smith agreed that redness can be caused by many things, including an infection or lack of cleanliness.

Appellant called Dr. Kathleen Kline, a psychologist, to testify regarding appellant's IQ. According to Kline, she possessed a doctorate in psychology, but she denied being an expert. Kline testified that she believed she was testifying as a fact witness regarding her report on appellant. Kline stated she performed a battery of tests on appellant and concluded that appellant's IQ was estimated to be 70. Kline opined that appellant's score meant he fell within the mildly delayed to low average range.

M.B. testified that she was shocked and upset when she heard the allegations

against appellant, but her feelings changed after she heard the results of the sexual assault exam. Michele Betanco was one of the CPS workers assigned to the CPS investigation. Betanco testified that M.B. voluntarily agreed to give up her parental rights to the complainant and her brother so that L.W., an aunt, could adopt them. M.B., on the other hand, testified that CPS and her aunts bullied her into agreeing to the termination of her parental rights thereby allowing the children to be adopted by L.W. and her husband.

Appellant was charged with continuous sexual abuse of a child. *See* Tex. Penal Code Ann. § 21.02. The jury charge included the lesser-included offense of aggravated sexual assault of a child for penetrating the child's sexual organ, mouth, or anus. *See id.* at § 22.021. The jury convicted appellant of the lesser-included offense of aggravated sexual assault of a child. After hearing the punishment evidence, the trial court sentenced appellant to serve 35 years in prison. This appeal followed.

ANALYSIS

While we ultimately sustain appellant's first issue arguing that the trial court abused its discretion when it failed to conduct an informal inquiry into his competency, we must first address appellant's third issue, which challenges the sufficiency of the evidence supporting his conviction. *See McFarland v. State*, 930 S.W.2d 99, 100 (Tex. Crim. App. 1996) (holding that "an appellate court must examine and decide a sufficiency challenge even if the conviction must be reversed on other grounds").

I. The evidence is legally sufficient to support appellant's conviction of aggravated sexual assault of a child.

Appellant argues in his third issue that the evidence is legally insufficient to support his conviction. Appellant makes this argument even though he recognizes

the well-established principle that a child sexual abuse victim's uncorroborated testimony is sufficient to support a conviction for aggravated sexual assault. We address this issue first because, if sustained, it affords appellant the greatest relief. *See* Tex. R. App. P. 43.3; *Campbell v. State* 125 S.W.3d 1, 4 n.1 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

A. Standard of review and applicable law

The elements of aggravated sexual assault of a child are found in Penal Code section 22.021. A person commits the offense if the person intentionally or knowingly "causes the penetration of the anus or sexual organ of a child by any means;" or "causes the penetration of the mouth of a child by the sexual organ of the actor;" and "the victim is younger than 14 years of age." Tex. Penal Code § 22.021(a)(1)(B), (a)(2)(B). Physical evidence is not necessary to affirm a sexual assault conviction. *See Bargas v. State*, 252 S.W.3d 876, 888 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (stating physical evidence is not required to affirm a sexual assault conviction when the child victim provides ample testimony to establish that a sexual assault occurred). Instead, the uncorroborated testimony of a child seventeen years of age or younger is sufficient to support a conviction for aggravated sexual assault of a child. Tex. Code. Crim. Proc. art. 38.07; *Ryder v. State*, 581 S.W.3d 439, 449 (Tex. App.—Houston [14th Dist.] 2019, no pet.). Courts liberally construe the testimony of child sexual abuse victims. *Lee v. State*, 176 S.W.3d 452, 457 (Tex. App.—Houston [1st Dist.] 2004), *aff'd*, 206 S.W.3d 620 (Tex. Crim. App. 2006).

B. The complainant's testimony provides legally-sufficient evidence to support appellant's conviction.

Appellant challenges the sufficiency of the evidence on four grounds. First, while recognizing that the complainant's testimony alone is sufficient to support

his conviction, appellant emphasizes the fact that complainant "is the only witness to the alleged conduct." Second, appellant points out the lack of "physical evidence, forensic evidence, or medical evidence" to corroborate the complainant's allegations. Third, appellant points out possible motivations for the complainant to lie about appellant sexually assaulting her. This includes Y.M.'s alleged desire to gain custody of her grandchildren, the testimony that appellant was the disciplinarian in the apartment, and the complainant's exposure to pornographic images. Fourth, appellant points out that the jury failed to convict him of continuous sexual abuse of a child which he asserts casts doubt on the evidence supporting his conviction of the lesser-included offense of aggravated sexual assault of a child. We conclude none of appellant's arguments establishes that, when viewed under the appropriate standard of review, the evidence was legally insufficient to support his conviction.

We turn first to appellant's fourth contention arguing that the jury declining to convict him of continuous sexual assault indicates that the evidence supporting his conviction of the lesser-included offense of aggravated sexual assault of a child is legally insufficient. We disagree that the jury's decision to not convict appellant of the greater charge factors into our analysis of the sufficiency of the evidence supporting the lesser-included offense conviction. We instead measure the legal sufficiency of the evidence by the elements as defined by a hypothetically correct jury charge for the lesser-included offense. *See Castillo v. State*, 7 S.W.3d 253, 261 (Tex. App.—Austin 1999, pet. ref'd) (conducting legal sufficiency-review of lesser-included offense conviction by examining evidence through prism of hypothetically correct charge for lesser-included offense).

In his remaining contentions, appellant asks this court to re-weigh the evidence in the case. This we cannot do. *Montgomery*, 369 S.W.3d at 192. The

jury, as the trier of fact, is the ultimate authority to determine the credibility of the witnesses and to weigh the evidence offered during the trial. *See Canfield*, 429 S.W.3d at 65. Here, the jury heard the complainant provide a detailed account of appellant sexually assaulting her. It also heard evidence that no physical or medical evidence existed to corroborate the complainant's account, as well as explanations why that does not eliminate the possibility that a sexual assault occurred. Finally, the jury also heard appellant's efforts to create doubt about the complainant's credibility by pointing out possible motivations to lie. The jury still found appellant guilty of aggravated sexual assault. We conclude that, viewing the evidence in the light most favorable to the prosecution, the evidence provided by the complainant is legally sufficiency to support appellant's conviction. *See Bargas*, 252 S.W.3d at 888 (holding evidence sufficient to sustain conviction for sexual assault despite lack of physical evidence, where child victim provided detailed testimony to establish sexual assault occurred). We overrule appellant's third issue on appeal.

II. The trial court abused its discretion when it failed to conduct an informal competency evaluation of appellant.

Appellant argues in his first issue that the trial court abused its discretion when it did not "conduct a sua sponte informal inquiry into appellant's competency during trial." We agree with appellant.

A. Standard of review and applicable law

A criminal trial of an incompetent defendant violates the Due Process Clause of the Fourteenth Amendment. *Pate v. Robinson*, 383 U.S. 375, 378 (1966); *Boyett v. State*, 545 S.W.3d 556, 563 (Tex. Crim. App. 2018) (citing *Turner v. State*, 422 S.W.3d 676, 688 (Tex. Crim. App. 2013)); *see* U.S. Const. amend. XIV, § 1. The Legislature codified this due-process requirement by establishing a substantive and

procedural framework for making competency determinations to ensure that legally incompetent criminal defendants do not stand trial. *Id.*; *see* Tex. Code Crim. Proc. arts. 46B.003, 46B.004, 46B.005. In Texas, a person is incompetent to stand trial if he does not have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, or a rational as well as factual understanding of the proceedings against the person. Tex. Code Crim. Proc. art. 46B.003(a).

A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proven incompetent by a preponderance of the evidence. *Id.* art. 46B.003(b). The Code of Criminal Procedure establishes a two-step procedure trial courts must employ before concluding that a defendant is incompetent to stand trial. *Boyett*, 545 S.W.3d at 563. The first step is an informal inquiry and the second step is a formal competency trial. *Id.*

An informal inquiry is triggered upon a suggestion from any credible source that a defendant may be incompetent. *Id.* (citing Tex. Code Crim. Proc. art. 46B.004(a), (c), (c-1)). On suggestion that the defendant may be incompetent to stand trial, 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). No further evidentiary showing is required, nor is the trial court required to have a bona fide doubt regarding a defendant's competency. *Id.* art. 46B.004(c-1).

Evidence suggesting the need for an informal inquiry may be based on observations made in relation to one or more of the factors described in article 46B.024 of the Code of Criminal Procedure, or on any other indication that the defendant is incompetent within the meaning of article 46B.003. *Id.* arts.

46B.004(c-1), 46B.024. The factors set out in article 46B.024 include, but are not limited to, the capacity of the defendant during criminal proceedings to (1) rationally understand the charges against him and the potential consequences of those pending charges, (2) disclose to his defense counsel pertinent facts, events, and states of mind, (3) engage in a reasoned choice of legal strategies and options, (4) understand the adversarial nature of the criminal proceedings, (5) exhibit appropriate courtroom behavior, and (6) testify. *Id.* art. 46B.024(1)(A)-(F).

If a "trial judge finds that there is a suggestion of incompetency, he or she shall conduct an informal inquiry to determine if there is some evidence from any source that would support a finding that the defendant is incompetent to stand trial." *Druery v. State*, 412 S.W.3d 523, 538 (Tex. Crim. App. 2013) (internal quotation marks omitted). Some evidence of incompetency to stand trial is a quantum of evidence that is "more than none or a scintilla, that rationally may lead to a conclusion of incompetency." *Ex parte LaHood*, 401 S.W.3d 45, 52–53 (Tex. Crim. App. 2013).

Because the informal inquiry is not the appropriate venue for determining the merits of a claim of incompetency, the trial court should not weigh evidence of competency against evidence of incompetency in conducting an informal inquiry. *Druery*, 412 S.W.3d at 538. Instead, the purpose of the informal inquiry is to determine whether the issue of incompetency to stand trial is sufficiently raised to merit a formal hearing. *See Ex parte LaHood*, 401 S.W.3d at 52–53 & n.5. On determining the existence of "some evidence" of incompetency to stand trial, and subject to certain exceptions, the trial court shall order an examination, and it must hold a trial "before determining whether the defendant is incompetent to stand trial on the merits." Tex. Code Crim. Proc. art. 46B.005(b). At that hearing, the defendant must prove his incompetence by a preponderance of the evidence. *Id.*

art. 46B.003(b); *Druery*, 412 S.W.3d at 538.

B. The trial court abused its discretion when it failed to conduct an informal inquiry into appellant's competency to stand trial because his counsel's statement was a suggestion from a credible source that appellant might be incompetent.

In support of his contention that the trial court should have conducted an informal inquiry into his competency to stand trial, appellant points out several things that occurred during his trial that he asserts put the trial court on notice his competency to stand trial was at issue. Appellant initially points out his attorney's comments during opening statements that appellant was the "functional equivalent of an 11-year-old" and "finds it difficult to keep the most menial jobs." Appellant next points out that appellant has an estimated IQ of 70, which places him in the "mildly delayed to below-average range." Finally, appellant points out part of the exchange that occurred between his trial counsel, the trial court, and himself before he took the stand to testify. This exchange took place outside the presence of the jury and consisted of the following:

The Court:	Mr. Bautista, I need to go over some of your rights. I want you to have him come up here and stand in front of me. Come with him. Mr. Bautista, do you know that you have the right to remain silent. It's a constitutional right that every citizen has in this country. Do you understand that?
The Defendant:	Yes, sir.
The Court:	Now have you - - by calling - - by your attorney calling you to testify in this case, you're giving up your right to remain silent. What that means is if you testify, then you can be treated like any other witness. You can be cross-examined. Your attorney will ask you questions and the state will be entitled to cross-examine you and ask you questions that would be permissible to ask any

other witness. Do you understand that?

The Defendant: Yes, sir.

The Court: Okay. Now, have you had sufficient time to talk with [your attorney] Mr. Griffin about your right to remain silent?

Mr. Griffin: We've talked about it a few times.

The Court: And are you willingly, knowingly and willingly waiving your right to remain silent and want to take the stand and testify in this case?

The Defendant: Yes, sir.

The Court: Counsel, is this waiver of his right to remain silent, is this waiver given with your consent and approval?

Mr. Griffin: Judge, he wants to testify. He's got a story to tell. He wants to tell it. I approve. It's his life.

The Court: I understand. So it's his wish and you're conceding to his wish to remain - - but you've counseled him one way or another, however you think it ought to go?

Mr. Griffin: Yes, sir.

The Court: Okay. Do you think he's had enough time to knowingly appreciate his right to remain silent and is fully aware of what it entails when he waives it?

Mr. Griffin: I can't make that statement, Judge. I'm here to tell you that [appellant] is very limited in what he understands when we speak. We've gone over this a few times. But, whether or not he fully comprehends it, that's a mystery to both of us.

The Court: Mr. Bautista.

The Defendant: Yes, sir.

The Court: Do you understand that if you choose not to testify, then nobody can ask any questions and then the case is decided on what the evidence has been presented up to this point? Do you understand that?

The Defendant: Okay.

The Court: But if you waive your right to remain silent, then you can be cross-examined about anything that's relevant to this case. You know, you've been here and you've seen the cross-examination. You've seen the cross-examination of your girlfriend and things like that. It's probably going to be just that hard. Do you understand that?

The Defendant: Yes, sir.

The Court: And you still want to take the stand and testify and waive your right to remain silent?

The Defendant: Yes, sir.

The Court: All right. The Court finds that Mr. Bautista is aware of his right to remain silent, that counsel has visited with him about it, that he has indicated, not only to the Court, but to his attorney, that he wishes to testify in this case and tell his side of the story. The Court finds that the Defendant has knowingly waived his right to remain silent. The Court approves that waiver and will allow you to testify in this case. All right.

Go ahead and have a seat and then, when you get here, he's going to call you again. I'm going to ask you to come forward. I'm going to give you the oath just like I give any other witness. Once I do that, then I'll tell you to go have a seat, adjust the microphone and then we'll go forward, okay?

The Defendant: Yes, sir.

Even if we assume that the evidence indicating appellant possessed lower than average intelligence was insufficient to serve as a suggestion of incompetency, we conclude that appellant's trial counsel's comment that he was unsure what, if anything, appellant understood about the proceedings, was enough. *See* Tex. Code Crim. Proc. art. 46B.004(c-1) (stating that a suggestion of incompetency "may consist solely of a representation from any credible source that

the defendant may be incompetent."). As a result, we conclude that the trial court was required at that point in time to conduct an informal inquiry to determine whether there was some evidence from any source that would support a finding that appellant was incompetent to stand trial. *Id.*; *Clark v. State*, 592 S.W.3d 919, 925 (Tex. App.—Texarkana 2019, pet. denied) ("The amount of information necessary to trigger an informal inquiry is low. It may consist solely of a representation from any credible source that the defendant may be incompetent."); *Greene v. State*, 225 S.W.3d 324, 329 (Tex. App.—San Antonio 2007, no pet.) (abrogated on other grounds by *Montoya v. State*, 291 S.W.3d 420 (Tex. Crim. App. 2009)) ("[T]he statute places the burden to conduct an informal inquiry regarding competency on the trial court, and notwithstanding trial counsel's actions, the trial court had before it sufficient evidence suggesting that Greene may be incompetent.").

While the State initially argues there was "no indication anywhere in the record that [appellant] didn't understand" the charges against him, it alternatively suggests that the trial court's three simple yes-or-no questions that were asked after appellant's trial counsel's statement, "could be seen as essentially an informal inquiry into Bautista's competency." The State then cites three cases in support of this contention. As explained below, we disagree that the trial court's three closed-ended questions constituted an informal inquiry.

First, there is no indication in the record that the purpose of the three questions was to fulfill the requirements of an informal competency inquiry. *See Boyett*, 545 S.W.3d at 559 ("In response to the motion suggesting appellant's incompetency, the trial court held an informal competency inquiry.") Second, we conclude that each of the cases cited by the State is distinguishable. In *Luna v. State*, the trial court made repeated inquiries into the defendant's competency with

both the defendant and his attorney. 268 S.W.3d 594, 598–600 (Tex. Crim. App. 2008). Each time the defendant indicated his understanding of the proceedings and the consequences of his decisions. *Id.* at 600. Most important, however, was the fact that in *Luna*, unlike here, the defendant's trial counsel repeatedly assured the trial court that the defendant was competent to stand trial. *Id.* The same is true in *Jackson v. State*, 391 S.W.3d 139, 142 (Tex. App.—Texarkana 2012, no pet.) ("This exchange supports the trial court's determination that Jackson fully understood the charges pending and was able to communicate with her attorney in a rational manner. We find there is no evidence from any source indicating that Jackson was mentally incompetent to stand trial"). There, the trial court asked the defendant open-ended questions and then asked her trial counsel to "talk to [him] about [Jackson's] mental competency, please." *Id.* Then, unlike here, appellant's trial counsel responded, "Your Honor, Ms. Jackson and I have had numerous conversations, and based upon those conversations I have no doubt about her mental competency." *Id.* Finally, in *Gray v. State*, 257 S.W.3d 825, 828 (Tex. App.—Texarkana 2008, pet. ref'd), the trial court asked the defendant open-ended questions and then invited his defense counsel to "talk to [him] about your judgment as to your client's mental competency." The defendant's trial counsel then stated that, unlike in the present case, "we have been able to converse such that I'm satisfied that he understands what he is doing." *Id.* We therefore conclude that the cases cited by the State do not support its contention that the trial court's three yes – or – no questions constituted an informal inquiry into appellant's competence.

We hold that the trial court abused its discretion when it did not conduct an informal inquiry into appellant's competency. We therefore sustain appellant's first issue.

DISPOSITION

Having sustained appellant's first issue on appeal, we abate appellant's appeal and remand the case to the trial court. *See Turner v. State*, 422 S.W.3d 676, 696 (Tex. Crim. App. 2013) (abating appeal and remanding the case to the trial court for a determination whether it was feasible to conduct a retrospective competency trial). On remand, the trial court shall, within 30 days, initially determine the feasibility of a retrospective competency inquiry given the passage of time, availability of evidence, and any other pertinent considerations. *See id.* (citing 43 George E. Dix & John M. Schmolesky, *Texas Practice: Criminal Practice and Procedure* § 31:81, at 89–90 & n.10 (3d ed. 2011)). If the trial court determines a retrospective competency inquiry is feasible, it shall conduct an informal inquiry into appellant's competency to stand trial. If the informal inquiry establishes that there is some evidence of incompetency, it shall conduct a formal competency trial. Regardless of whether the trial court deems a retrospective competency inquiry feasible or not, the record of the trial court's proceedings on remand shall be filed with this Court on or before 90 days from the date of this order for reinstatement of appellant's appeal.[1]

/s/ Jerry Zimmerer
Justice

Panel consists of Justices Wise, Zimmerer, and Spain.
Publish — TEX. R. APP. P. 47.2(b).

[1] We will address appellant's remaining issue, if necessary, once the competency matter is resolved by the trial court. *See Turner*, 422 S.W.3d at 697, n.44.