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 Vol. 22, No. 27, July 7, 2014

Case Name: [Charles Ray Owens v. The State of Texas](#)

- OFFENSE: Felony Murder
- COUNTY: Harrison
- C/A CASE No. 06-13-0199-CR
- DATE OF OPINION: June 27, 2014
- DISPOSITION: Conviction Reversed OPINION: [Moseley, J.](#)
- TRIAL COURT: 71st D/C; Hon. Brad Morin
- LAWYERS: [Vernard Solomon](#) (Defense); [Coke Solomon](#) & [Timothy Cariker](#) (State)

(Background Facts) Trooper Dennis Redden stopped a truck driven in Harrison County, Texas by Appellant, because he believed Appellant to be speeding. A check by Redden revealed that Appellant was shown to have an outstanding Michigan arrest warrant but Appellant had a child passenger with him. Rather than deal with the problem of disposing of the child if Appellant were to be immediately arrested, Redden agreed to allow Appellant to drive home in order to drop off his child passenger before submitting to arrest. Redden followed Appellant home, but as soon as the child exited his truck, Appellant sped off and Redden followed in hot pursuit. While chasing Appellant, Redden came upon Appellant's truck, which had become involved in a serious collision. Witnesses reported that they saw Appellant's truck speed through an intersection and forcefully collide with a vehicle driven by Bobby Smith, who suffered severe head injuries and was pronounced dead at the scene.

 **301.01 Witnesses / Expert Witnesses / Qualifications:** Appellant was charged with the felony murder of Smith. He raised the issue of his competency to stand trial based on his claim of amnesia for a period of time beginning a few days before the fatal collision and continuing for a period of some days after it. Dr. Thomas Allen was appointed by the trial court to examine Appellant and rendered his opinion of Appellant's competency to stand trial. Thereafter, a competency hearing was conducted and, although Appellant objected to the fact that Allen did not meet the statutory qualifications as an expert, Allen was permitted to testify. In that testimony, Allen opined that Appellant was competent to stand trial. Allen's testimony was the sole evidence that contradicted Appellant's claim of incompetence to stand trial, and the jury rejected Appellant's claim of incompetence. Appellant contends that the trial court erred by allowing Allen to testify on the question of Appellant's competence because Allen lacked the required statutory qualifications to testify as an expert regarding such a determination.

Holding: In most circumstances, a trial judge is required under [Daubert v. Merrell Dow Pharms., Inc.](#), 509 U.S. 579, (1993); and [Kelly v. State](#), 824 S.W.2d 568 (Tex.Cr.App. 1992), to determine whether a proffered witness possesses the requisite credentials to testify as an expert. However, when the issue regards the question of the competence of an individual to stand trial, persons who are called as expert witnesses must meet certain statutory qualifications. A person who testifies as an expert regarding a defendant's competence to stand trial must be a licensed psychiatrist or psychologist and must satisfy a precise list of requirements. In his testimony, Allen confirmed that he did not satisfy the statutory requirements to testify as an expert on the issue of Appellant's competency. The State does not dispute that Allen failed to satisfy the statutory qualifications for expert testimony for such determinations but the State responds to Appellant's complaint regarding this fact by arguing that (1) any error regarding Allen's qualifications to testify is invited error, (2) when all the circumstances are taken into consideration, admitting Allen's testimony was not error, and (3) there was other evidence of competence before the jury.

Holding: Absent [the necessary] qualifications on Allen's part, the trial court erred by overruling [Appellant]' objection and by admitting Allen's testimony and expert report. *** Even though [Appellant] prepared the mutually agreed upon order appointing Allen, upon learning that Allen failed to meet the statutory requirements, [Appellant] made a timely objection to the trial court and properly sought Allen's disqualification. [Appellant] did not induce the trial court to overrule his objection. Therefore, we find the law of invited error inapplicable to the facts of this case. *** The State's reliance on [Von Byrd v. State](#), 569 S.W.2d 883 (Tex.Cr.App. 1978), is misplaced. *** No one in [Von Byrd](#) questioned whether the examining expert met the statutory qualifications set out in Article 46B.022 of the Texas Code of Criminal Procedure; rather, the claim centered on the allegation that the proposed expert was disqualified by reasons not contemplated in the statute. Here, the State does not dispute the fact that Allen failed to meet the statutory qualifications. *** Because the sole evidence against [Appellant]' claim of incompetence was the testimony of Allen and because Allen did not meet the statutory qualifications for an expert for that kind of determination, we find the determination of his competence to be flawed. We further find that determination and, thus, the testimony of Allen, to be harmful to [Appellant]. *** A fatal flaw in the determination of [Appellant]' competence to stand trial renders anything that occurred during the ensuing trial moot. Accordingly, it is unnecessary for us to examine the third point of error raised by [Appellant] (i.e., whether there was a fatal variance between the indictment and the evidence at trial).

Ed Note: The Court of Appeals found that Appellant's claim that the trial court erred in denying his motion to quash the indictment had not been preserved, because, immediately prior to the trial on the merits, on the eve of voir dire, defense counsel orally objected to the indictment and moved to quash it, but there is no written motion in the record on appeal.