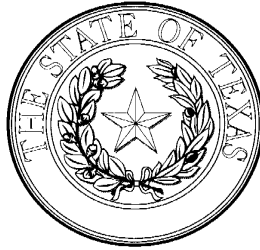


Opinion issued December 13, 2022



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-21-00385-CV

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**IN RE COMMITMENT OF WILLIAM LEE HILL**

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**On Appeal from the 180th District Court  
Harris County, Texas  
Trial Court Case No. 1291462Z**

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**MEMORANDUM OPINION**

Based on a jury's verdict, the trial court adjudged appellant William Lee Hill a sexually violent predator and civilly committed him for sex-offender treatment and supervision pursuant to Texas Health and Safety Code chapter 841. In his sole appellate issue, Hill contends that the visiting judge made improper comments to the venire panel on the legal effect of the jury's answer and on the weight of the

evidence. Because we hold that Hill failed to properly object by requesting a curative instruction and failed to establish that the alleged errors were of a type that could not be cured, we conclude that Hill did not preserve this complaint for consideration on appeal. Accordingly, we affirm.

### **Background**

The State filed a petition alleging that Hill is a sexually violent predator and requesting that he be committed for treatment and supervision pursuant to Health and Safety Code chapter 841.

A visiting judge oversaw the jury selection process. The visiting judge told the venire panel:

[I]n this particular case, ultimately what the jury is going to be deciding is whether or not Mr. Hill is going to be committed to . . . receive sex offender treatment. Okay. So it's not the typical criminal case, like a burglary of a building where you hear all the facts and you decide did that person break into the building or did they not, are they guilty or are they not. In this particular situation, this person, Mr. Hill, has already been convicted of some type of sexual offense where there was some kind of contact. And as—and the bottom line is that as he's getting ready to be paroled, there are some that are of the opinion that he should go to—that he should be civilly committed to receive continued sexual treatment, sexual offender treatment. Your job is going to be to decide whether or not—based on what you hear from the State and their witnesses—whether or not he should be made to be committed to continue to receive sex offender treatment.

Hill did not object to these statements by the trial court during voir dire. Both the State and Hill went on to inform the jury that it would answer one question—whether Hill was a sexually violent predator. And both parties correctly

informed the jury that it would answer that question by deciding whether Hill was a repeat sexually violent offender and whether he has a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence, as provided by statute. The jury was selected, seated, and sworn in.

The following day, the elected judge took over the trial. While presenting pretrial motions, Hill raised a complaint regarding the visiting judge's comments to the venire panel the previous day:

Yesterday during voir dire the [visiting judge] . . . told the venire panel that this is a case about whether [Hill] should be committed for sex offender treatment, even though we had discussed it with her and she made it clear to us that she understood that she was not supposed to go into that. I understand my objection is untimely, but I did want to make that objection on the record.

Hill also moved for a mistrial based on the visiting judge's statements made during voir dire. The trial court denied the motion for mistrial, and the trial began.

Both the State and Hill reiterated during their opening and closing statements that the jury would answer one question—whether Hill is a sexually violent predator—by considering the statutory elements of whether he is a repeat sexually violent offender and whether he has a behavioral abnormality that makes him likely to engage in predatory acts of sexual violence.

The parties agreed to the trial court's admission of Hill's penitentiary packet into evidence. This packet demonstrated his prior convictions for indecent exposure in 1998 and 2001 in Oklahoma and for two counts of aggravated sexual

assault of a child under 14 in 2011 in Harris County. Hill himself also testified about his prior convictions.

The State's forensic psychologist, Darrel Turner, Ph.D., diagnosed Hill with pedophilic disorder, exhibitionistic disorder, psychopathy, and a schizotypal personality disorder. Turner further testified that Hill suffered from behavioral abnormalities that made him likely to engage in predatory acts of sexual violence.

The jury charge tracked the statutory language. The jury found that Hill was a sexually violent predator. The trial court signed a final judgment decreeing Hill a sexually violent predator and ordered his civil commitment. This appeal followed.

### **Analysis**

In his sole issue, Hill argues that he is entitled to new trial because the visiting judge made improper comments to the venire panel about the legal effect of the jury's verdict and on the weight of the evidence. Hill argues that "[i]t was improper for the court to mislead the venire panel into thinking that the question before the jury would be one of continued treatment when the issue the jury decided would actually be whether [it] found beyond a reasonable doubt that Hill is a sexually violent predator." Hill further argues that it was improper for the visiting judge to comment that Hill "has already been convicted of some type of sexual offense" when the State bore the burden of proving those prior convictions.

The State argues that Hill did not preserve this complaint for review on appeal. To preserve error based on a comment made during voir dire, a party must object to the alleged improper comment when it occurs and request a curative instruction, unless an instruction cannot render the comment harmless. *See In re Commitment of Stuteville*, 463 S.W.3d 543, 557 (Tex. App.—Houston [1st Dist.] 2015, pet. denied); *see also Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001) (“[O]bjection to a trial court’s alleged improper conduct or comment must be made when it occurs if a party is to preserve error for appellate review, unless the conduct or comment cannot be rendered harmless by proper instruction.”). “Unwaivable error must be of the type that ‘cannot be repaired’ and therefore needs no objection.” *Stuteville*, 463 S.W.3d at 557. The party claiming error bears the burden to “explain how any comments made by the trial judge were incurable or would excuse [the claimant’s] failure to preserve error.” *Id.* (quoting *Dow Chem. Co.*, 46 S.W.3d at 241).

Hill failed to request a curative instruction, and he has failed to demonstrate that such an instruction could not have rendered the judge’s comments harmless. *See id.* Hill argues that this was a fundamental error that we may take notice of regardless of whether it was properly brought to the trial court’s attention. We disagree. The visiting judge’s comments here are not of the type that “cannot be repaired.” *See Stuteville*, 463 S.W.3d at 557. Had Hill objected during voir dire and

requested a curative instruction, the judge could have clarified the proper roll of the jury in this case. As it was, both Hill and the State correctly informed the venire panel of the question that it would answer and of the statutory requirements relevant to making that finding.

Furthermore, when Hill did raise this objection after the jury was already seated and sworn, he failed to request a curative instruction or explain to the trial court how the visiting judge's comments the previous day were incurable. And again, both the State and Hill in their opening and closing statements, as well as the trial court in its charge, explained the proper roll of the jury in determining whether Hill is a sexually violent predator. Hill agreed to the admission of the penitentiary packet establishing the existence of his prior convictions, and he confirmed the existence of those convictions in his own testimony. Dr. Turner testified without contradiction that Hill suffered from a behavioral abnormality that made him likely to engage in predatory acts of sexual violence. Nothing in the record demonstrates that the jurors were confused regarding the nature of the evidence before them or their role in finding whether Hill was a sexually violent predator.

Accordingly, we conclude that Hill failed to meet his burden to "explain how any comments made by the trial judge were incurable or would excuse [his] failure to preserve error." *See id.*; *see also Dow Chem. Co.*, 46 S.W.3d at 241. We further hold that he failed to preserve this complaint for our review because he did

not request a curative instruction. *See In re Commitment of Fontenot*, 536 S.W.3d 906, 917–18 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (holding that complaint that trial court misled jury during voir dire by stating that the jury would determine whether appellant needed further treatment as a sexually violent predator was not preserved because appellant failed to demonstrate comments were incurable and instead argued in conclusory manner that “misinformation” likely resulted in improper judgment).

We overrule Hill’s sole issue.

### **Conclusion**

We affirm the judgment of the trial court.

Richard Hightower  
Justice

Panel consists of Chief Justice Radack and Justices Landau and Hightower.