

Fifth Circuit Court of Appeal State of Louisiana

No. 26-KH-432

STATE OF LOUISIANA

versus

MIGUEL LOPEZ

IN RE MIGUEL LOPEZ

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE JACQUELINE F. MALONEY, DIVISION "D", NUMBER 11-1280

TRUE COPY

October 06, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and John J. Molaison, Jr.

WRIT GRANTED; RULING REVERSED; MOTION IN LIMINE GRANTED; MATTER REMANDED

On June 23, 2011, a Jefferson Parish Grand Jury indicted relator for the second degree murder of his six-year-old daughter in violation of La. R.S. 14:30.1. On July 8, 2015, relator was found not guilty by reason of insanity. The trial court subsequently ordered relator committed to Eastern Louisiana Mental Health System ("ELMHS"). As part of that order, the trial court required ELMHS to report when the superintendent was of the opinion that relator "can be discharged or can be released from probation, without danger to others or to himself [.]"

On May 22, 2019, the trial court granted relator's conditional release from ELMHS and placed him on supervised probation for five years, with the proviso that the period of supervised probation may be extended each year after his completion of the five-year term.

Over the years, relator sought modification of the terms of his conditional release. On July 30, 2025, Community Forensic Services filed a Motion to Set Review of Conditions of Release with the trial court. Following a hearing on August 7, 2025, the trial court denied the motion.

On September 5, 2025, relator, through counsel, filed a writ application with this Court in which he sought review of the trial court's August 7, 2025 ruling. On January 8, 2026, this Court denied relator's writ application. *State v. Lopez*, 25-412, 2026 WL 65054, at *1–2 (La. App. 5 Cir. 1/8/26).

On April 28, 2026, the Louisiana Supreme Court granted relator's writ application, vacated the trial court's judgment, and remanded relator's case "for a new hearing where evidence may be introduced and the proper legal standard applied." *State v. Lopez*, 26-179 (La. 4/28/26), 432 So.3d 118, 119 (per curiam). The Louisiana Supreme Court specifically found:

The state must establish "that the committed person is dangerous to others or dangerous to himself" by clear and convincing evidence. La. C.Cr.P. art. 657.3(A)(2). At the August 7, 2025 hearing, the trial court appeared to articulate a standard of "even the slightest possibility" of dangerousness to constitute a sufficient showing by the State.

The trial court abused its discretion in failing to require the state to prove dangerousness by clear and convincing evidence. The trial court further erred in relying only on the crime of which the defendant was found to have been not guilty, by reason of insanity, as proof of his dangerousness. *See* La. C.Cr.P. art. 657.3(A)(2) ("In satisfying its burden of proof, the state may not rely solely upon the nature of the crime for which the committed person was found not guilty by reason of insanity ...").

Id. at 118–19.

On remand, on July 28, 2026, relator filed a new Motion for Modification of Conditional Release Placement, requesting the following: 1) discharge from Harmony Transitional Services ("HTS") to a less restrictive community-based housing placement as determined by the Office of Probation and Parole ("OPP"); and 2) authorization to obtain gainful employment and other less restrictive terms as determined by the OPP.

At a hearing on August 5, 2026, Kevin Carmouche, relator's probation officer, and Alana Bishop, the forensic district coordinator, testified. The trial court then continued the hearing but also requested that relator produce the following

documents for its inspection before the hearing resumed: 1) documents showing relator's financial assets, including title documents showing if relator owns a home in Texas and documents showing if relator owns property or businesses in Honduras and the nature of the businesses; 2) all of relator's medical records from 2011 to present, including non-psychiatric records; and 3) information regarding relator's alleged "inappropriate relationship" with a former female HTS employee. The trial court further requested that the State produce relator's full rap sheet, including a "Triple I," as well as relator's criminal history from Honduras, if available. The trial court also requested that relator provide an update via e-mail on obtaining the records that the trial court had ordered produced. In addition, the trial court indicated its preference to review the medical records in advance of the next hearing, without first being admitted into evidence. At this time, neither the State nor relator made an objection.

On August 6, 2026, relator's counsel e-mailed the trial court that the requests for the documents had been made but the documents were unlikely to be ready before the scheduled August 10, 2026 hearing.

However, on August 10, 2026, "[a]fter further consideration of the Court's request, and before the materials are viewed by the Court," relator filed a Motion in Limine Regarding Records Ordered Produced by the Court. Relator objected to the trial court's order for the production of documents on the following grounds: 1) the order to produce documents from relator impermissibly shifts the burden of proof, which conflicts with the decision issued by the Louisiana Supreme Court's April 28, 2026 per curiam opinion in this case; 2) the order to produce documents was improper as the trial court was acting as an advocate or party; 3) the documents ordered to be produced are overbroad and irrelevant; and 4) the trial court reviewing and considering these documents not first admitted as evidence is improper.

A hearing on the motion in limine took place on August 28, 2026. Following relator's arguments, Marianne Fletcher, the regional attorney for the Louisiana Department of Health, appeared in response to the trial court's request for relator's medical records. Ms. Fletcher explained the time-consuming nature of producing all of relator's medical records, dating back to 2011, given that the records were stored on microfilm. Ms. Fletcher also shared relator's concerns that the trial court was "conducting its own discovery" and further objected to the scope of the

request which included records that “don’t provide any insight into his present dangerousness.”

The State initially questioned its standing in connection with the motion in limine but ultimately opposed the motion, citing La. C.E. art. 611(A), which provides that “the court, [] shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence.” The State also relied on the provision in La. C.E. art. 614, which states: “The court, at the request of a party or if otherwise authorized by legislation, may call witnesses, and all parties are entitled to examine witnesses thus called.” The State further asserted that the trial court had the authority to request the records pursuant to La. C.Cr.P. art. 657.1(B), which provides that in ordering a conditional release from a mental health facility, the trial court “shall subject a conditionally released insanity acquittee to such orders and conditions it deems will best meet the acquittee’s need for treatment, supervision, and monitoring and will best serve the interests of justice and society.” Finally, the State argued that the requested records were relevant given that relator was seeking modification to his current placement.

At the close of the August 28, 2026 hearing, the trial court denied the motion in limine, stating: “The Court maintains its request to review those documents pursuant to Louisiana law, and specifically, Article 657.1, Subpart B.”

I. Discussion

Evidentiary rulings are subject to review for abuse of discretion. *State v. Perez-Espinosa*, 23-111 (La. 1/28/23), 354 So.3d 644, 645 (per curiam).

La. C.Cr.P. art. 657.1 provides the criteria for conditional release, stating, in relevant part:

- A. At any time the court considers a recommendation from the hospital-based review panel that the person may be discharged or released on probation, it may place the insanity acquittee on conditional release if it finds the following:
 - (1) Based on the factors which the court shall consider pursuant to Article 657, he does not need inpatient hospitalization but needs outpatient treatment, supervision, and monitoring to prevent his condition from deteriorating to a degree that he would likely become dangerous to self and others.
 - (2) Appropriate outpatient treatment, supervision, and monitoring are reasonably available.

- (3) There is significant reason to believe that the insanity acquittee, if conditionally released, would comply with the conditions specified.
- (4) Conditional release will not present an undue risk of danger to others or self, as defined in R.S. 28:2.

The statutory framework governing an insanity acquittee's conditional release further provides the trial court with the authority to impose "such orders and conditions it deems will best meet the acquittee's need for treatment, supervision, and monitoring and will best serve the interests of justice and society." *See* La. C.Cr.P. art. 657.1(B). In 2024, the Louisiana Legislature enacted La. C.Cr.P. art. 657.3, establishing active supervised release for dangerous persons who are not mentally ill. Specifically, the statute provides that the State may seek active supervised release of a committed person based upon the committed person's continued dangerousness even if the committed person does not have a mental illness as defined by La. C.Cr.P. art. 657.3, if both of the following conditions are met:

- (1) The committed person was found not guilty by reason of insanity for any of the following offenses or attempts to commit any of them:
 - (a) Any crime punishable by death or by life imprisonment.
 - (b) Any crime that is either a crime of violence as defined by R.S. 14:2(B) or a sex offense as defined by R.S. 15:541.
- (2) The state proves by clear and convincing evidence that the committed person is dangerous to others or dangerous to himself as defined by R.S. 28:2. In satisfying its burden of proof, the state may not rely solely upon the nature of the crime for which the committed person was found not guilty by reason of insanity and may not rely solely upon the diagnosis of any personality disorder.

The trial court specifically cited La. C.Cr.P. art. 657.1(B) as the source of its authority to *sua sponte* order production of unadmitted records. However, the plain language of the relevant statutes does not support the trial court's freestanding power to order the production of records on its own motion. Also, comment (a) of the official revision comments to La. C.Cr.P. art. 657,¹ setting out the conditions for discharge or release, states the following:

¹ La. C.Cr.P. art. 657 provides:

After considering the report or reports filed pursuant to Articles 655 and 656, the court may either continue the commitment or hold a contradictory hearing to determine whether the committed person no longer has a mental illness as defined by Article 657.3 and can be discharged, or can be released on probation, without danger to others or to himself as defined by R.S. 28:2. At the hearing, the burden shall be upon the state to seek continuance of the confinement by

This article provides flexibility in release procedures, to cope with circumstances of individual cases, by allowing the court to act on the basis of the application and reports filed, or to order a full hearing to determine the propriety of the requested release. Further flexibility in release procedures, and additional protection to the public, is afforded by the provision authorizing the court to release on probation, on such conditions as it determines to be necessary. Probationary release, subject to continued supervision and double-checking of the defendant's condition and habits, is most significant in this type of release; for there will be cases in which release is justified only if the defendant is to be carefully supervised upon his return to community life.

Thus, while the trial court has the statutory authority to order a hearing, the information that the trial court may rely upon in its determination is meant to arrive through the parties themselves, rather than compelling and considering unadmitted documents before a hearing is held. As such, we conclude that the trial court erred by relying on La. C.Cr.P. art. 657.1(B) in support of its request.

Furthermore, while La. C.E. art. 611 grants broad powers to the trial court regarding "the mode and order of interrogating witnesses and presenting evidence," it does not allow the trial court to order and consider unadmitted evidence.

Finally, we conclude that the trial court's order for the production of records shifted the State's burden of proof under La. C.Cr.P. art. 657.3. Specifically, the trial court ordered relator to produce his bank account and property records as part of its own inquiry to determine whether relator, who claimed to own property in Texas and Honduras, suffered from "delusions of grandeur" given his confinement since 2011, stating, "I would appreciate the opportunity to fulfill my duty to both him and society to look at those to make sure that he is not actively hallucinating." However, La. C.Cr.P. art. 657.3(A)(2) also makes clear that "[i]n satisfying its burden of proof, the state may not rely solely upon the nature of the crime for which the committed person was found not guilty by reason of insanity and may not rely solely upon the diagnosis of any personality disorder." Thus, such documentation

proving by clear and convincing evidence that the committed person currently has a mental illness and is dangerous, except as provided in Article 657.3. After the hearing, and upon filing written findings of fact and conclusions of law, the court may order the committed person discharged, released on probation subject to specified conditions for a fixed or an indeterminate period, or recommitted to the state mental institution. A copy of the judgment and order containing the written findings of fact and conclusions of law shall be forwarded to the administrator of the forensic facility. Notice to the counsel for the committed person and the district attorney of the contradictory hearing shall be given at least thirty days prior to the hearing.

is not relevant to the trial court's determination. In the same way, relator's non-psychiatric medical records, as well as documentation of an alleged "inappropriate relationship," are beyond the scope of the Supreme Court's remand order in *Lopez*, particularly when the hearing has yet to be concluded.

As such, we conclude that the trial court abused its discretion by denying relator's motion in limine after issuing an order, *sua sponte*, for the production of unadmitted records in the absence of any statutory or jurisprudential authority.

II. Conclusion and Decree

Accordingly, for the foregoing reasons, this writ application is granted, the trial court's ruling is reversed, relator's Motion in Limine Regarding Records Ordered Produced by the Court is granted, and this matter is remanded to the trial court for further proceedings.

Gretna, Louisiana, this 6th day of October, 2026.

**JGG
MEJ
JJM**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
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JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **10/06/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-KH-432

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Jacqueline F. Maloney (DISTRICT JUDGE)
Honorable Paul D. Connick, Jr. (Respondent) Melanie A. Bray (Relator)
Darren A. Allemand (Respondent)

MAILED