

App. No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

CHRISTOPHER WILLIAMS,
Petitioner

v.

THE STATE OF TEXAS,
Respondent

**ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT
OF CERTIORARI TO THE COURT OF APPEALS
OF TEXAS, FOURTEENTH DISTRICT**

PETITIONER'S APPLICATION TO EXTEND TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States
Supreme Court acting as Circuit Justice for the Fifth Circuit of the United States:

I. Application for Delay of Certiorari Deadline

The Petitioner, Christopher Williams, respectfully requests that the time to file a Petition for a Writ of Certiorari be extended for 59 days, to and including Friday, September 7, 2018. Unless extended, the time within which to file a petition for a writ of certiorari in this matter will expire on July 10, 2018. The Petitioner has

filed this application to extend the deadline over 10 days before that date. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257(a).

A copy of the opinion of the Fourteenth Court of Appeals of Texas is included in the Appendix at 2. The order of the Court of Criminal Appeals of Texas denying discretionary review on April 11, 2018 is included in the Appendix at 13.

II. Reasons to Delay Certiorari Deadline

1. The State of Texas presented in the trial court below what most courts would judge sufficient, if not overwhelming evidence, that the Petitioner killed a transvestite prostitute on June 13, 2011. The State of Texas filed the case as a capital murder rather than a “simple murder.” The State’s theory elevating the murder to a death-penalty eligible capital murder was that the Petitioner had committed the murder while robbing his victim. Investigators collected DNA evidence at the scene, but, as there was no evidence linking the Petitioner to the crime, the investigation quickly went cold.

Not until September 2013 would a DNA match be found. Known DNA from the Petitioner matched DNA collected from the mouth of the victim with high probability. To make that part of the story short, assume for argument that the evidence that Petitioner murdered the victim was overwhelming.

Texas law provides that a murder committed during the commission of a robbery elevates a “simple” murder to capital murder. TEX. PENAL CODE ANN. § 19.03(A)(2) (WEST 2013). Where the aggravating element is that the murder was committed during a robbery, the evidence must show that the killer's intent to rob was formed at or before the time of the murder. *See Alvarado v. State*, 912 S.W.2d 199, 207 (Tex. Crim. App. 1995) (citing *Robertson v. State*, 871 S.W.2d 701, 705 (Tex. Crim. App. 1993), *overruled on other grounds*, *Warner v. State*, 245 S.W.3d 458, 463 (Tex. Crim. App. 2008)).

What is unusual is that the State relied entirely on an extrajudicial confession to prove the aggravating element of robbery. Therefore, as a matter of Texas state law, the evidence supporting the robbery could not be sufficient if the extrajudicial confession was not corroborated by other evidence showing the *corpus delicti* of the robbery. *See Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013) (noting *corpus delicti* rule is one of evidentiary sufficiency affecting cases in which there is an extrajudicial confession). The Texas rule states, “[w]hen the burden of proof is ‘beyond a reasonable doubt,’ a defendant's extrajudicial confession does not constitute legally sufficient evidence of guilt absent independent evidence of the *corpus delicti*.” *Id.* To satisfy the *corpus delicti* rule, there must be “evidence independent of a defendant's extrajudicial confession show[ing] that the ‘essential

nature’ of the charged crime was committed by *someone*.” *Id.* at 866; (emphasis supplied) *see Salazar v. State*, 86 S.W.3d 640 (Tex. Crim. App. 2002).

This other evidence need not be sufficient by itself to prove the offense: “all that is required is that there be some evidence which renders the commission of the offense more probable than it would be without the evidence.” *Id.* (quoting *Chambers v. State*, 866 S.W.2d 9, 15–16 (Tex. Crim. App. 1993)). The Court of Criminal Appeals of Texas has also held that, “in a capital murder case, the *corpus delicti* requirement extends to *both the murder and the underlying aggravating offense*.” *Williams v. State*, 958 S.W.2d 186, 190 (Tex. Crim. App. 1997). (*emphasis supplied*).

The Court of Criminal Appeals of Texas has often referred to the *corpus delicti* rule as a matter of “evidentiary sufficiency.” As a simple matter of logic, evidence cannot be “legally insufficient” to support a conviction for a crime unless the State fails to make some required factual showing in the trial court. Here, the specific factual showing in question is whether the Petitioner’s extrajudicial confession was sufficiently corroborated, to the degree required by state law.

Well settled precedent from this Court establishes that any factual issue (except the fact of a prior conviction) that, when resolved against a defendant, elevates the range of punishment must be submitted to a jury and proven beyond a reasonable doubt. A scheme that does otherwise violates a defendant’s Sixth

Amendment right to a jury trial. *See Blakely v. Washington*, 542 U.S. 296, 305-06 (2004); *Ring v. Arizona*, 536 U.S. 584, 608–610 (2002); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). *See also* U.S. Const. amend. VI.

The Petitioner was deprived of any such jury instruction, and the trial court therefore, with the full sanction of the Texas appellate courts, violated the Petitioner’s Sixth Amendment right to trial by jury.

The main matter here revolves around the Petitioner’s Sixth Amendment right to have the jury decide all factual issues that turned his case from a simple murder with a 5-life punishment range into a capital murder case where the only punishment choices were execution or imprisonment for life without the possibility of parole. The Texas Courts below flagrantly disregarded this Court’s well-established jurisprudence on the matter.

2. Establishing that an error involving a Federal Constitutional right occurred below is only a small fraction of what is important to convince this Court to review such a case by writ of certiorari. Such a petition would need, at a minimum, to give the Court a sense of how the issue may currently play out across the country. Are cases like this common? How do states resolve these issues, and are they following this Court’s *Apprendi* jurisprudence? Are there any implications for Federal courts on issues either developing or amid a circuit split that answering addressing the issue here could illuminate or provide definitive guidance?

3. It is at this point counsel sits in conducting research for the petition for a writ of certiorari. While I would ordinarily not mention other professional obligations, it would be almost impossible to overstate how much Hurricane Harvey has affected the practice of law in Harris County, Texas, particularly the practice of criminal law. When Harvey struck at the end of August 2017, it flooded the Harris County Criminal Justice Center, knocking it completely offline. Early estimates for repairs hovered around 2 years, although a very complicated docket schedule has been developed for inmate cases beginning as of June 4, 2018, occupying four floors of that building. I handled a plea in that building, for the first time since Harvey hit, today.

Criminal courts have been forced to combine with civil courts across the street – courts that do not have facilities for handling in-custody cases. With prisoner cases, dockets have been conducted in the basement of the Harris County Jail, where the only real opportunity to speak to a client is in a room full of other prisoners, all charged with equally violent crimes. The situation is untenable, and tasks that would have taken 10-15 minutes a year ago, often take *an entire day* now. The Civil Justice Center, to where many of the District Courts trying criminal cases have moved, has no facilities for handling prisoner cases.

It is the worst kind of mess and chaos.

See, e.g., <https://harriscountycriminaljustice.blogspot.com/2018/04/the-powder-keg.html> (Retrieved June 11, 2018);

<https://harriscountycriminaljustice.blogspot.com/2017/09/pandemonium.html>

(retrieved June 11, 2018);

<https://harriscountycriminaljustice.blogspot.com/2017/09/justice-displaced.html>

(retrieved June 11, 2018)

4. Counsel is an appointed solo practitioner, who, before Harvey hit, had built his practice around appointed appellate matters. When Harvey descended on the greater Houston area, contested matters stopped happening, and that put an end to any new appellate matters. My business's Westlaw subscription includes Texas State and Federal materials. I can no longer afford to maintain access to other state materials, research in which is critical to whether the cert petition in this case will sufficiently interest the Court for it to grant review. And under the Fair Defense Act rules here, I must certify that I have done all the work on the case myself. No one else can be paid to help me. The County Law Library where one can find full Westlaw access closes at 7:00 p.m. on weekdays and is not open on the weekends. I can access the materials I need at that library, but it is only open at times grossly inconvenient.

Additionally, counsel and his family were ravaged with the Rotavirus about 3 weeks ago. This particularly nasty illness cost counsel close to 15 days of work on top of the Harvey related complications described above.

Counsel has communicated with opposing counsel, and the State of Texas does not oppose this application for an extension.

III. Prayer

Under all these circumstances, a 59-day extension¹ is justified, and the Petitioner respectfully prays that the Court grant the request to delay the certiorari deadline for 59 days to and including Friday, September 7, 2018.

Respectfully Submitted,

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¹ Counsel has asked for a 59-day extension because a 60-day extension would fall on a Saturday, and, were the Court inclined to consider granting the request, it would result in an extension exceeding 60 days. Asking for 59 days to avoid that result seems to me a better course for preserving one's candor toward the Court.