No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER WILLIAMS,
Petitioner

v.

THE STATE OF TEXAS,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Texas has adopted a *corpus delicti* rule requiring that an extra-judicial confession have a quantum of corroboration before a conviction can be had based on it.

It is well settled in Texas that its *corpus delicti* rule is one of "evidentiary sufficiency" and applies to the aggravating factors elevating a simple murder to a capital murder.

Here, Texas used an extrajudicial confession as proof that the Petitioner committed murder in the course of committing robbery, the element that elevated the case to a capital, rather than a "simple," murder.

The trial court below failed to instruct the jury about Texas's *corpus delicti* rule, even though corroboration was an essential fact without which the Petitioner could not have been convicted of capital murder or subjected to the dramatically elevated punishment range he ultimately faced.

Did the trial court's failure to submit any instruction to the jury regarding Texas' *corpus delicti* rule and the subsequent endorsement of that failure by the Fourteenth Court of Appeals of Texas, deprive the Petitioner of his right to a jury trial jury guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution in direct contravention of this Court's decisions in *Apprendi v. New Jersey* and its progeny?

PARTIES

Christopher Williams is the Petitioner. Respondent is the State of Texas.

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OPINIONS AND ORDERS BELOW

The Court of Criminal Appeals order refusing discretionary review is unreported. App. 001A. The decision of the Court of Appeals for the Fourteenth District of Texas is unreported. App. 003A. The judgment and sentence entered by the 176th District Court of Harris County, Texas is unreported. App. 014A.

JURISDICTION

The Fourteenth Court of Appeals issued its opinion and judgment on December 21, 2017. App. 002A, 003A. On April 11, 2018, the Court of Criminal Appeals of Texas denied a timely filed petition for discretionary review. App. 001A. On June 20, 2018, ruling on application number 17A1384, The Honorable Samuel A. Alito, Jr., Associate Justice of the United States Supreme Court, extended the deadline for filing this petition for writ of certiorari until August 9, 2018.

This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

STATUTES AND CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...." U.S. Const. amend. VI.

The Fourteenth Amendment to the United States Constitution provides "No State shall .... deprive any person of life, liberty, or property, without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, §1.

STATEMENT OF THE CASE

A. Legal Background: Texas's Corpus Delicti Rule

Under Texas's "*corpus delicti* rule," any extrajudicial confession must be corroborated by evidence showing the *corpus delicti* of the crime. The *corpus delicti* rule is a rule of "evidentiary sufficiency" providing that "an extrajudicial confession of wrongdoing, standing alone, is not enough to support a conviction; there must exist other evidence showing that a crime has in fact been committed." *Rocha v. State*, 16 S.W.3d 1, 5 (Tex. Crim. App. 2000)(quoting *Williams v. State*, 958 S.W.2d 186, 190 (Tex. Crim. App. 1997)). This other evidence is commonly called the "*corpus delicti*." *Id.* The 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 squarely held that, "in a capital murder case, the *corpus delicti* requirement extends to both the murder and the underlying aggravating offense." *Williams*, 958 S.W.2d at 190. To satisfy the *corpus delicti* rule, there must be "evidence independent of a defendant's extra-judicial confession show[ing] that the 'essential nature' of the charged crime was

committed by someone." *Id*. at 866 ; *see Salazar v. State*, 86 S.W.3d 640 (Tex. Crim. App. 2002).

B. Factual Background: The Crime, The Trial, and the Appeal

About thirty minutes after midnight on June 13, 2011, an officer with the Houston Police Department was dispatched to a shooting that had just occurred inside an apartment complex. (RR3 34).[1] It only took about a minute for her to arrive on the scene, going directly to the dumpster her dispatcher had described. (RR3 34-35). There, she found a dead body. (RR3 35-36).

She recognized the deceased individual as someone she often saw walking up and down the street at night when she was patrolling the area. (RR3 37-38). She indicated that she saw him almost every night, and it "appeared that he was prostituting."

She described him, noting his arms were placed on the body "[k]ind of like he was protecting, shielding himself."[2] (RR3 40). The man's dress had been pulled back to expose his genitals. (RR3 40). She also noted a "white sticky substance that appeared to be semen by the body." (RR3 41).

[1] The Petitioner cites the official reporter's record by volume and page number. Thus, (RR3 34) is a reference to Volume 3 of the Reporter's Record at page 34. *See* Supreme Court Rule 12.7.
[2] Later, another investigator testified that his arms were "obviously … over our complainant's head." (RR3 108). This investigator noted his genitals were exposed and he was not wearing any underwear. (RR3 108-09).

Police initially could not develop any suspects, and by June 29, 2011, the case was "closed" pending new investigative leads. The case would remain inactive "for around two years." (RR3 190-91).

In September 2013, Williams emerged as a suspect when DNA taken from the scene matched samples known to have been taken from him. (RR3 191). After the DNA came back connecting Williams to the scene of the murder and the body of the victim, police could at least show there had been a sexual encounter between the two. But there was not yet enough proof to charge Williams with murder.

Caleb Mouton (hereafter "Mouton"), an old acquaintance of Williams, would become the backbone of the State's case. Mouton grew up with Williams and testified he had known him for 12-14 years. (RR4 13). According to Mouton, Williams told him he "might have messed up." (RR4 14). Mouton said that Williams believed, after talking to a police detective, that he had left his DNA at a crime scene. (RR4 15). Mouton testified that Williams told him "basically, like, what happened, with that man." (RR4 15).

Mouton spoke with Williams two times about the details of the murder. According to Mouton, during their first conversation, Williams told him he had spotted a prostitute walking on the side of some apartments and told a companion he

wanted to "hit the lick." (RR4 16).[3] Mouton testified that Williams told his companion to slow down, and he got out of the car and approached the prostitute. (RR4 17). Mouton testified that Williams asked the prostitute for sexual services because "he sensed the prostitute was aware of kind of danger…." (RR4 17)(sic). According to Mouton, Williams said:

> he came to agreement with the prostitute that they will exchange money for service, so the prostitute and him agreed and they – they went to – towards the gate, and, uh, the prostitute – the prostitute kind of suspicious so he made Christopher, uh, squeeze through the gate first.

(RR4 18)(sic).

Mouton testified that during this first conversation with Williams, Williams told him he "drew down" on the prostitute with his .380. (RR4 19). Mouton testified the prostitute became aware of the impending robbery and they "began to struggle for the pistol." (RR4 20). Mouton claimed that Williams said he gained control and shot the male prostitute in the head. (RR4 210). According to Mouton,

> He said … he took the money off the, uh, prostitute and he said that he spitted on the ground, that's where the DNA had come from, how they tracked it down to him. (RR4 20).

Mouton claimed that Williams told him he took the money from the prostitute's chest. (RR4 21). Mouton thought he used the word "shirt" or "bra."

[3] According to Mouton, "… a lick means basically any time you can come up on something as far as a robbery." (RR4 17).

According to Mouton, during their second conversation, Williams told him, "Bro, I wasn't telling you the truth. What I'm about to tell you don't tell nobody else." (RR4 27). Mouton testified that Williams told him the night he "killed that guy," they "found my semen in his mouth, that's where the DNA that tracked me back … to the case." (RR4 27)(sic). Mouton indicated that while Williams had originally told him he spit on the ground next to the prostitute, that he now was admitting it was semen. (RR4 27). As Mouton put it, Williams told him they had found "his nut." (RR4 28). Mouton testified that Williams denied knowing the prostitute was male until he was in the process of "getting sucked up." (RR4 28).

Mouton testified that Williams told him that at the moment he realized the prostitute was male, "he pulled out his gun, and then it became a struggle, and he … gained control and he shot him in his head." (RR4 31).

Mouton was a jailhouse snitch, and William's statements to him were extra-judicial confessions. If one is to believe Mouton, Williams told two stories about how he committed the murder. According to Mouton, in the first version, Williams said he targeted the male prostitute for robbery and killed him in the course of that robbery. The sexual contact was incidental to the robbery.

In the second version, however, Mouton said Williams claimed that he did not realize that the prostitute from whom he was receiving oral sex was male, and she shot him immediately on making this discovery.

Following a trial, the jury found Williams guilty, and, on September 23, 2015, the trial court assessed his punishment at imprisonment for life, without the possibility of parole. App. 014A.

Williams argued in the court below that there was insufficient evidence to corroborate his extrajudicial confession and show that the murder of the male prostitute had been a capital murder, rather than a murder. The court below rejected this argument, finding there had been sufficient corroboration and that the evidence would support his conviction. App. 020A, 003A.

However, it was a panel of appellate court judges that evaluated the sufficiency of the corroboration of the extrajudicial confession to prove that Williams had committed the murder while committing robbery and had committed capital murder, rather than a simple murder.

Under Texas law, had the evidence been insufficient to corroborate his extra-judicial confession that the State used to prove the murder was committed in the course of committing a robbery, Williams could not have been convicted of capital murder. Put slightly differently, the presence of sufficient corroboration was a fact that elevated the case from a murder to a capital murder and elevated the punishment range from imprisonment for as low as five years to as high as life, with the possibility of parole to a simple binary choice: execution or imprisonment for life, without the possibility of parole. *See* TEX. PENAL CODE § 19.02 (c) (West

2013)(providing that a simple murder is a first-degree felony); TEX. PENAL CODE §§ 19.03(a)(2) & (b) (West 2013)(providing that a murder committed during the course of the commission of a robbery is a capital felony); TEX. PENAL CODE. §12.32 (West 2013)(providing that the punishment range for a first-degree felony is imprisonment for life or for any term of not more than 99 years or less than 5 years); TEX. PENAL CODE § 12.31(a) (West 2013)(providing that, "An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole or by death.")[4]

Here the question for review emerges. The State used an extra-judicial confession to prove that Williams committed murder in the course of committing robbery, dramatically increasing the punishment available for his crime, or perhaps more precisely, dramatically increasing the minimum punishment available. Was Williams entitled, under the Sixth and Fourteenth Amendments, to a jury instruction explaining the corpus delicti rule, did the trial court err in failing to give such an instruction, and did the court of appeals err in endorsing that failure in direct

[4] The State did not seek the death penalty. Thus, as Williams was over the age of 18 at the time of the crime, the only punishment available, once sufficient corroboration of the extrajudicial confession was found, was imprisonment for life without the possibility of parole. TEX. PENAL CODE §12.31(a)(2)(West 2013)

contravention of this Court's controlling authority in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and its progeny?

As an initial matter, Williams neither requested such an instruction in the trial court nor objected to the absence of such an instruction in the jury charge. (RR4 206-208). This would ordinarily be fatal to the Petitioner because it would deprive this Court of jurisdiction to review the matter, even if it were inclined otherwise to do so. *See, e.g.*, *In re Lamkin*, 355 U.S. 59 (1957); *Ferguson v. Georgia*, 365 U.S. 570, 572 (1961). Generally, if a Petitioner fails to follow State procedures for raising his federal question at the earliest possible time, this Court will lack jurisdiction to review his question. *See, e.g.*, *Hulbert v. City of Chicago*, 202 U.S. 275 (1906)(involving a complete failure to raise federal question in the trial court); *Wainwright v. Sykes*, 433 U.S. 72 (1977)(involving failure to object to admission of inculpatory statements).

Texas rules regarding charge error are peculiar however, and under Texas law, charge error may be raised on direct appeal whether it has been preserved by objection or otherwise or has instead been ignored. If an appellant raises an issue regarding charge error on direct appeal in Texas, an appellate court must first determine if there is error in the charge. If there is error, and the error is "preserved," then the appellate court should reverse if the error caused the appellant "some harm." If, instead, there is error in the charge but no contemporaneous objection, then the

appellate court should reverse only if the appellant suffered "egregious harm." *See Kirsch v. State*, 357 S.W.3d 645, 649 (Tex. Crim. App. 2012)(noting that appellate review of claims of jury-charge error first involves a determination of whether the charge was erroneous and, if it was, then second, an appellate court conducts a harm analysis, with the standard of review for harm depending on whether error was preserved for appeal); *see also Oursbourn v. State*, 259 S.W.3d 159, 181–82 (Tex. Crim. App. 2008)(describing Texas's approach to charge error).

In Texas, whether there is an objection to the jury charge affects the harm analysis that a reviewing court must employ. It does not impact the ability of an appellant to raise the issue. On direct appeal in his first merits brief, the Petitioner expressed the question for review: "Did the trial court err in failing to *sua sponte* instruct the jury on the *corpus delicti* rule?" And while he did not mention *Apprendi* in his first merits brief, he mentioned it at oral argument. Moreover, at oral argument in the Fourteenth Court of Appeals, the panel asked both the Petitioner and the State of Texas to provide it with post-submission briefing.

In his post-submission brief, solicited by the Court, the Petitioner cited *Apprendi*, arguing it mandated a jury charge on the *corpus delicti* rule. When the Fourteenth Court of Appeals addressed the issue, however it simply said, "[A] trial judge need not instruct the jury on corroboration when the *corpus delicti* is established by other evidence. Here, as discussed above, evidence independent of

appellant's extrajudicial confessions is sufficient to establish the *corpus delicti* of Davis's robbery. Therefore, the trial court was not required to instruct the jury regarding the corpus delicti rule." *Williams v. State*, No. 14-15-00836-CR, Slip op. at 8 (Tex. App. – Houston [14th Dist.] December 21, 2017, pet. ref'd)(not designated for publication). The Fourteenth Court of Appeals simply ignored the federal question in its opinion, but it necessarily decided that question adversely to the Petitioner when it affirmed the trial court's judgment.

On January 26, 2018, the Petitioner filed a petition for discretionary review in the Court of Criminal Appeals of Texas. On April 11, 2018, the Court of Criminal Appeals refused to grant discretionary review. App. 001A.

REASONS FOR GRANTING THE WRIT

A. Legal Background: The Clarity of this Court's Controlling Authority

In *Apprendi v. New Jersey*, this Court held that, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490 (sic).

In *Ring v. Arizona*, this Court held that Arizona's then existing capital sentencing scheme was unconstitutional after *Apprendi*, noting that the scheme allowed a judge to make findings that authorized the death penalty when the jury's

verdict finding Ring guilty only of first-degree murder authorized only a sentence of life imprisonment. *Ring v. Arizona*, 536 U.S. 584, 597–98 (2002). In *Ring*, this Court emphasized language in *Apprendi* that said, "If a State makes an increase in a defendant's authorized punishment contingent on a finding of fact, that fact – no matter how the State labels it – must be found by a jury beyond a reasonable doubt." *Id.* at 602 (citing *Apprendi*, 530 U.S. at 482–83).

In *Alleyne v. United States*, this Court held that facts that increase the mandatory minimum punishment for a crime must be submitted to a jury and proven beyond a reasonable doubt. Referring to historical practices, this Court reiterated *Apprendi's* conclusion that "any 'facts that increase the prescribed range of penalties to which a criminal defendant is exposed' are elements of the crime." *Alleyne v. United States*, 570 U.S. 99, 111 (2013)(citing *Apprendi*, 530 U.S. at 490). This Court said, "...it is impossible to dispute that facts increasing the legally prescribed floor *aggravate* the punishment." *Id.* at 113 (citing *Harris v. United States*, 536 U.S. 545, 579 (2002), *overruled by Alleyne v. United States*, 570 U.S. 99 (2013). Finally, in *Alleyne*, this Court said, "Defining facts that increase a mandatory statutory minimum to be part of the substantive offense enables the defendant to predict the legally applicable penalty from the face of the indictment..." and "preserves the historic role of the jury as an intermediary between the State and criminal

defendants." *Alleyne*, 570 U.S. at 114–15 (citing *Apprendi*, 530 U.S. at 478–79; *United States v. Gaudin*, 515 U.S. 506, 510–11 (1995)).

Apprendi set a bright line rule – the Sixth and Fourteenth Amendments demand that any fact that increases the punishment a criminal defendant may be subjected to must be submitted to a jury and proven beyond a reasonable doubt. This is true if the facts raise the mandatory minimum sentence, and true of any facts that enhance a range of punishment no matter how a State characterizes them.

B. What Went Wrong Below in Light of Apprendi and Its Progeny

In Texas, a trial court must instruct a jury on the "law applicable to the case," and it must often do this even when a party doesn't ask it to do so. TEX. CODE CRIM. PROC. ANN. art. 36.14 (West 2013). *See, e.g.*, *Zamora v. State*, 411 S.W.3d 504 (Tex. Crim. App. 2013)(noting that "a trial court's burden to *sua sponte* instruct the jury on accomplice-witness testimony arises only when the evidence raises the issue.").

The relentless march of the *Apprendi* cases make it quite clear that facts elevating punishment, whether by increasing the maximum punishment or increasing the mandatory minimum punishment must be decided by a jury and proven beyond a reasonable doubt. Further, it matters not how a State characterizes those facts. What is important is that the facts increase the available punishment.

There is no constitutional requirement imposing on the States a general obligation to have a *corpus delicti* rule. At least one State has done away with any such rule, and some treat the issue as one of the admissibility of the defendant's extrajudicial confession, rather than the sufficiency of the evidence to sustain the conviction. *See, e.g.*, *Collins v. State*, No. CR-14-0753, 2017 WL 4564447 (Ala. Crim. App. Oct. 13, 2017)(designated for publication) ("It has been the rule in Alabama that the State must offer independent proof of the *corpus delicti* of the charged offense to authorize the admission of a defendant's confession or inculpatory statement."); *State v. Suriner*, 294 P.3d 1093, 1100 (Idaho 2013)(abandoning Idaho's *corpus delicti* rule).

However, when a State, like Texas, establishes a *corpus delicti* rule and insists that it is a rule of evidentiary sufficiency, it places its rule squarely within the *Apprendi* universe, at least insofar as it, like Texas, makes its rule applicable to facts that elevate the punishment available for a criminal defendant. By describing its *corpus delicti* rule as being one of "evidentiary sufficiency," Texas seems to have committed the question of whether an extrajudicial confession is sufficiently corroborated to the discretion of appellate judges. However, this Court has made it quite clear that it matters not at all how a state characterizes a fact that increases the available punishment. If a fact does that, it is an element of the offense, must be submitted to a jury, and must be proven beyond a reasonable doubt.

Obviously, this Court's *Apprendi* jurisprudence was law applicable to this case, and, as a matter of Texas statutory law, the trial court had to *sua sponte* instruct the jury on that jurisprudence. Its failure to do so implicates the Petitioner's right under State law to a correct jury charge that explains the "law applicable to the case," but, more important, it's failure to do so deprived him of his right to a trial by jury.

Because the trial court was required under Texas law to instruct the jury on the law applicable to the case *sua sponte*, the federal question here was at play in the trial court even though the Petitioner didn't mention it in that court. When the Fourteenth Court of Appeals asked for post-submission briefing, and the Petitioner pointed out that *Apprendi* required the trial court to submit a corpus delicti instruction to the jury, the federal question here presented was properly before it.

Yet, the Fourteenth Court of Appeals simply ignored the question, remaining silent with only an implied adverse finding flowing from its decision affirming the trial court's judgment. This appears to be grossly inconsistent with this Court's controlling authority.

This Court has never held that a corroboration requirement is subject to its *Apprendi* jurisprudence, but this Court has also repeatedly said that any fact that exposes a criminal defendant to a greater punishment range must be submitted to a jury. A state cannot escape this requirement regardless of how it may describe the fact.

The Fourteenth Court of Appeals silence on this federal question tacitly allowed the defendant's rights to a trial by jury under the Sixth and Fourteenth Amendments to be trampled by the trial court's actions. This Court should issue a writ of certiorari because a decision of the highest court in Texas, in this case the Fourteenth Court of Appeals, directly conflicts with a long line of cases requiring a different result. If this Court disagrees and believes that corroboration rules should not fall under the *Apprendi* umbrella, it should grant review and clarify the degree to which it meant "any fact" when it used that phrase in *Apprendi* and its progeny.

At a minimum, this court should grant the petition, remand the case to the Fourteenth Court of Appeals, and require it to reconsider its holding in light of this Court's controlling authority.

CONCLUSION

For the reasons set forth above, this Court should grant the petition for a writ of certiorari.

Respectfully Submitted,

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