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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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August 8, 2018

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ORDER OF THE COURT OF CRIMINAL APPEALS DECLINING DISCRETIONARY REVIEW OF THE FOURTEENTH COURT OF APPEALS JUDGMENT

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

4/11/2018 **COA No. 14-15-00836-CR**
WILLIAMS, CHRISTOPHER **Tr. Ct. No. 1410165** **PD-0103-18**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

KEVIN P. KEATING
THE KEATING LAW FIRM
5208 MEMORIAL
HOUSTON, TX 77007
* DELIVERED VIA E-MAIL *

001A

APPENDIX B

JUDGMENT OF THE FOURTEENTH COURT
OF APPEALS OF TEXAS

December 21, 2017

JUDGMENT

The Fourteenth Court of Appeals

CHRISTOPHER WILLIAMS, Appellant

NO. 14-15-00836-CR V.

THE STATE OF TEXAS, Appellee

This cause was heard on the transcript of the record of the court below. Having considered the record, this Court holds that there was no error in the judgment. The Court orders the judgment **AFFIRMED**.

We further order this decision certified below for observance.

APPENDIX C

OPINION OF THE FOURTEENTH COURT OF APPEALS OF TEXAS

Affirm and Memorandum Opinion filed December 21, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-00836-CR

CHRISTOPHER WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 1410165

M E M O R A N D U M O P I N I O N

A jury convicted appellant Christopher Williams of capital murder and the trial court assessed automatic punishment of life imprisonment without parole. *See* Tex. Penal Code Ann. § 12.31(a)(2) (Vernon Supp. 2017). We affirm.

BACKGROUND

Houston police responded to reports of a shooting in north Houston shortly after midnight on June 13, 2011. At the scene, police discovered the body of Nathan

Davis, who had been fatally shot once in the head.

The responding officer recognized Davis as a prostitute the officer frequently had observed in the area wearing a wig and a dress. Davis was wearing a wig and a dress at the time he was killed, and a witness recalled seeing Davis hours before his murder carrying a brown purse. Police did not find a purse, wallet, or money at the scene.

Police found a sticky white substance by Davis's body that appeared to be semen. Police also recovered a fired .380 caliber shell casing.

Two witnesses recalled hearing a sound similar to a gunshot and seeing an African-American man matching appellant's general description leaving the scene of the crime. Both witnesses testified that the man was holding "something white" in his hands. One witness recalled that the man also was holding a gun.

The police were unable to locate any suspects and closed the investigation into Davis's murder pending new investigative leads.

In September 2013, DNA evidence recovered from the crime scene matched samples from appellant. Subsequent testing indicated that the semen recovered from the ground at the crime scene and DNA recovered from Davis's mouth matched appellant's DNA profile to a high degree of probability.

Caleb Mouton, appellant's longtime friend, contacted police regarding a conversation in which appellant admitted to murdering Davis. Mouton, a convicted felon, stated that he was facing aggravated robbery charges when appellant made statements to him about Davis's murder. Mouton informed police of appellant's statements hoping to secure "[a] better deal on [his] aggravated robberies" in exchange for testimony. At the time of appellant's trial, Mouton had not entered into a deal with the State.

Mouton testified that appellant said he had been driving around with a friend the night of Davis's murder, saw Davis working as a prostitute, and decided to "approach [Davis] to try to rob him." Mouton testified that appellant said he asked Davis for sex, followed Davis behind a dumpster, and pulled a gun on him. Mouton testified that appellant said he and Davis struggled for the gun and that appellant shot Davis in the head. According to Mouton, appellant said he took money from Davis's "bra or shirt" after the shooting.

Police charged appellant with murder after receiving Mouton's tip. Mouton testified that he was with appellant when appellant learned of the indictment. Appellant "broke down in tears" and told Mouton that there was more to the story than he previously had relayed.

According to Mouton, after the indictment appellant again discussed with him the sequence of events that occurred the night of Davis's murder. Appellant said he was "riding around looking for money," saw Davis working as a prostitute, and approached Davis. Mouton testified that appellant said Davis seemed "suspicious of [appellant]" and "instead of just robbing him right there he was going to — [appellant] asked [Davis] for, you know, uh, sex or whatever." Mouton testified that appellant said he followed Davis behind a dumpster and received oral sex from Davis. Mouton testified that appellant said he shot Davis when "he noticed that [Davis] was a guy" and took money from Davis's body after the shooting. According to Mouton, appellant said that police "found [appellant's] semen in [Davis's] mouth," which provided "the DNA that tracked [appellant] back, uh, to the case."

Recounting appellant's statements to the police, Mouton included several details about Davis's murder that had not been included in police statements to the public, including the caliber of weapon used; that appellant's semen was in Davis's

mouth; that appellant said he had seen a man and a woman nearby when he fled the scene; that Davis had been shot once in the head; and that appellant took money from the bra Davis was wearing when he was murdered.

Police arrested appellant and charged him with capital murder for the murder and robbery of Davis. Appellant pleaded not guilty.

Appellant's trial was held in September 2015. Appellant requested a jury instruction on the lesser-included offense of murder; the trial court denied appellant's request.

A jury found appellant guilty of capital murder. Because the State did not seek the death penalty, the trial court assessed automatic punishment of life imprisonment without parole. *See* Tex. Penal Code Ann. § 12.31(a)(2).

ANALYSIS

Appellant challenges his conviction for capital murder. Appellant concedes that the evidence is sufficient to support a finding that he is guilty of murder, but contends that there is no evidence other than his own confession showing that the murder was committed in the course of a robbery. Appellant raises four issues on appeal:

1. The evidence, excluding appellant's extrajudicial confessions to Mouton, is insufficient to support appellant's conviction with regard to the underlying offense of robbery.
2. The trial court erred by failing to instruct the jury *sua sponte* on the corpus delicti rule.
3. The trial court erred by refusing appellant's request for a jury instruction on the lesser included offense of murder.
4. The trial court's alleged charge errors warrant a reversal of appellant's conviction.

We address each of these contentions in turn.

I. Sufficiency of the Evidence

Appellant asserts that the evidence is insufficient to establish that the murder was committed during or in furtherance of a robbery, and therefore disputes that the murder was a capital offense.

A person commits capital murder when he commits murder as defined under Texas Penal Code section 19.02(b)(1) and intentionally commits the murder in the course of committing or attempting to commit robbery. Tex. Penal Code Ann. § 19.03(a)(2) (Vernon Supp. 2017). A person commits murder under section 19.02(b)(1) when he intentionally or knowingly causes the death of an individual. Tex. Penal Code Ann. § 19.02(b)(1) (Vernon 2011). A person commits robbery when he, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. Tex. Penal Code Ann. § 29.02(a) (Vernon 2011). A person commits theft as defined in Chapter 31 when he unlawfully appropriates property with the intent to deprive the owner of the property. Tex. Penal Code Ann. § 31.03(a) (Vernon Supp. 2017).

Because this case involves an extrajudicial confession, the corpus delicti rule of evidentiary sufficiency affects our analysis. *Miller v. State*, 457 S.W.3d 919, 924 (Tex. Crim. App. 2015). "The rule states that, when 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*.

"The corpus delicti of a crime — *any* crime — simply consists of the fact that the crime in question has been committed by someone." *Fisher v. State*, 851 S.W.2d 298, 303 (Tex. Crim. App. 1993) (en banc) (emphasis in original). The corpus delicti rule is satisfied if evidence independent of the extrajudicial confession makes the

charged crime "more probable than it would be without the evidence." *Bradford v. State*, 515 S.W.3d 433, 437 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd) (internal quotation omitted). The evidence need not show that the defendant committed the charged crime, but only that the charged crime occurred. *Id*. For this inquiry we consider all the record evidence — excluding the extrajudicial confession — in the light most favorable to the jury's verdict to determine whether the evidence tended to establish the commission of the charged offense. *Parrish v. State*, 485 S.W.3d 86, 90 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd). Circumstantial evidence may be used to prove the corpus delicti of an offense. *Id*.

In a capital murder case, the corpus delicti requirement extends to both the murder and the underlying aggravating offense. *Rocha v. State*, 16 S.W.3d 1, 4 (Tex. Crim. App. 2000).

In a capital murder case involving the underlying offense of robbery, evidence showing that the victim possessed certain property before his death but was found without that property after his death satisfies the corpus delicti rule. *See Chiles v. State*, 988 S.W.2d 411, 414 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd) (corpus delicti rule satisfied where "[t]he victim's wife testified that the victim always wore his gold necklace and pager" and these items were not found with the victim's body); *see also Straughter v. State*, No. 05-10-00163-CR, 2011 WL 2028234, at *5 (Tex. App.—Dallas May 25, 2011, no pet.) (mem. op., not designated for publication) ("evidence that [the victim] always carried his wallet with him and that it was missing when his body was found" satisfied corpus delicti rule); *Simmons v. State*, No. 07-08-0229-CR, 2009 WL 3817582, at *4 (Tex. App.—Amarillo Nov. 16, 2009, pet. ref'd) (mem. op., not designated for publication) (evidence showing that the victim "had ten dollars with him when he walked away . . . and did not have it when his body was found" satisfied corpus delicti rule); *Schneider v. State*, No.

01-04-00868-CR, 2005 WL 2995824, at *3 (Tex. App.—Houston [1st Dist.] Nov. 3, 2005, pet. ref'd) (mem. op., not designated for publication) (corpus delicti rule satisfied where evidence showed that victim kept his cocaine in a small black bag and victim was found without black bag after murder).

The record in this case includes evidence independent of appellant's extrajudicial confessions that makes it more probable than not that appellant committed a robbery.

Witnesses testified that Davis regularly worked as a prostitute and appeared to be working as a prostitute the night he was murdered. Because he regularly engaged in prostitution, the State argued at trial that Davis likely possessed cash at the time of his murder. A witness also recalled seeing Davis the day of his murder carrying a small brown purse. Neither cash nor a purse was found with Davis's body.

Two witnesses testified that they saw a man leaving the scene of Davis's murder carrying "something white" in his hands. The State argued at trial that this "something white" was property appellant stole from Davis.

Considering this evidence in the light most favorable to the jury's verdict, it is more probable than not that appellant committed a robbery. Evidence suggested that Davis possessed money, a purse, or both before he was murdered. Police did not find a purse or money with Davis's body, and witnesses recalled seeing a man leaving the scene carrying "something white" in his hands. This evidence is sufficient to satisfy the corpus delicti rule in regard to the underlying offense of robbery. *See Chiles*, 988 S.W.2d at 414; *see also Straughter*, 2011 WL 2028234, at *5; *Simmons*, 2009 WL 3817582, at *4; *Schneider*, 2005 WL 2995824, at *3.

II. Instruction on the Corpus Delicti Rule

Appellant asserts that the trial court erred by failing to charge the jury *sua sponte* on the corpus delicti rule.

"[A] trial judge need not instruct the jury on corroboration when the corpus delicti is established by other evidence." *Baldree v. State*, 784 S.W.2d 676, 686-87 (Tex. Crim. App. 1989) (en banc); *see also Aguilera v. State*, 425 S.W.3d 448, 458 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd).

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. *See Baldree*, 784 S.W.2d at 686-87; *Aguilera*, 425 S.W.3d at 458.

III. Instruction on the Lesser-Included Offense of Murder

Appellant contends that the trial court erred by refusing his request for a jury instruction on the lesser-included offense of murder.

A two-part analysis determines whether a defendant was entitled to a lesser-included offense instruction. *Goad v. State*, 354 S.W.3d 443, 446 (Tex. Crim. App. 2011).

The first part of the analysis examines whether the requested instruction pertains to an offense that is a lesser-included offense of the charged crime. *Bullock v. State*, 509 S.W.3d 921, 925 (Tex. Crim. App. 2016). Here, murder is a lesser-included offense of capital murder. *Threadgill v. State*, 146 S.W.3d 654, 665 (Tex. Crim. App. 2004) (en banc).

The second part of the analysis examines whether there is evidence in the record that supports giving the lesser-included offense instruction to the jury. *Bullock*, 509 S.W.3d at 924-25. For this inquiry, we "examin[e] all the evidence

admitted at trial, not just the evidence presented by the defendant." *Id*. at 925.

"[A] defendant is entitled to an instruction on a lesser-included offense when there is some evidence in the record that would permit a jury to rationally find that, if the defendant is guilty, he is guilty only of the lesser-included offense." *Id*. at 925. The evidence is sufficient if it shows "that the lesser-included offense is a valid, rational alternative to the charged offense." *Id*. "Anything more than a scintilla of evidence" entitles the defendant to a lesser charge, but there "must be some evidence directly germane to the lesser-included offense for the finder of fact to consider before an instruction on a lesser-included offense is warranted." *Id*.

When a defendant requests a charge on the lesser-included offense of murder based upon a dispute about the element that elevates the offense to capital murder, the defendant is entitled to an instruction on murder if (1) there is "some evidence which negates the aggravating element," or (2) "the evidence of such aggravating element is so weak that a rational jury might interpret it in such a way as to give it no probative value." *Wolfe v. State*, 917 S.W.2d 270, 278 (Tex. Crim. App. 1996).

Appellant asserts that Mouton's testimony regarding his second conversation with appellant warrants a jury instruction on the lesser-included offense of murder.

Appellant asserts that "his second statement to Mouton . . . indicated that he received oral sex from the prostitute, not realizing his true gender until after the sex act had been completed." According to appellant, this evidence shows that appellant shot Davis upon discovering that he was a man — rather than in the course of robbing him — and thus entitles appellant to an instruction on the lesser-included offense of murder.

Mouton's testimony does not support this argument. Discussing his second conversation with appellant, Mouton testified that appellant said he was "riding

around looking for money," saw Davis working as a prostitute, and approached Davis. According to Mouton, appellant said he decided against robbing Davis immediately when Davis appeared "suspicious" of appellant; instead, he followed Davis behind a dumpster and received oral sex. Mouton testified that appellant said he shot Davis when "he noticed that [Davis] was a guy," and that appellant recalled taking money from Davis's body after the shooting.

This testimony is consistent with the conclusion that appellant shot and killed Davis in the course of robbing or attempting to rob him. Mouton's testimony about his second conversation with appellant — specifically, that appellant said he was "riding around looking for money" — suggests that appellant had the intent to rob even before he selected Davis as his victim. Similarly, delaying the robbery to receive oral sex does not show that appellant lacked altogether the intent to rob Davis. Instead, Mouton's testimony suggests that appellant orchestrated this sequence of events to allay Davis's suspicions and conduct the robbery in a more secluded location behind a dumpster. Mouton's testimony, in its entirety, does not "negate[] the aggravating element" of robbery and does not entitle appellant to an instruction on the lesser-included offense of murder. *See Wolfe*, 917 S.W.2d at 278.

The remaining evidence neither negates the aggravating element of robbery nor lacks probative value. Mouton testified that, in two conversations, appellant said he was riding around the night of Davis's murder looking for an individual to rob. Mouton testified that appellant said he shot Davis and took money from him. Davis regularly worked as a prostitute and a witness recalled seeing Davis the day of his murder with a purse; the police did not find a purse or money with Davis's body. Two witnesses testified that they saw an African-American man matching appellant's general description leaving the scene of Davis's murder carrying "something white." On this record, there is no evidence that would have permitted

a rational jury to acquit appellant of capital murder while convicting him of murder.

Appellant also suggests that the State's failure to satisfy the corpus delicti rule with regard to the underlying offense of robbery entitles him to an instruction on the lesser-included offense of murder. Appellant does not cite any cases that incorporate the corpus delicti rule in this manner. Instead, case law states that we "examin[e] all the evidence admitted at trial" to determine whether the defendant was entitled to a lesser-included offense instruction. *Bullock*, 509 S.W.3d at 925. Further, as discussed above, the evidence admitted at trial satisfies the corpus delicti rule with regard to the underlying offense of robbery. Appellant's corpus delicti argument does not warrant an instruction on the lesser-included offense of murder.

Because we overrule appellant's first three issues, we do not reach his fourth issue addressing remedies for the alleged charge errors.

CONCLUSION

Having overruled all of appellant's issues on appeal, we affirm the trial court's judgment.

/s/ William J. Boyce
Justice

Panel consists of Justices Boyce, Jamison, and Brown.
Do Not Publish — TEX. R. APP. P. 47.2(b).

APPENDIX D

JUDGMENT AND SENTENCE OF THE 176TH DISTRICT COURT OF HARRIS COUNTY, TEXAS

CASE NO.141016501010
INCIDENT NO./TRN: 9168960751A002

THE STATE OF TEXAS	§	IN THE 176TH DISTRICT
	§	
V.	§	COURT
	§	
WILLIAMS, CHRISTOPHER	§	HARRISCOUNTY, TEXAS
	§	
STATE ID NO.:TX07865319	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. STACEY W. BOND	Date Judgment Entered:	09/23/2015
Attorney for State:	JOHN WAKEFIELD	Attorney for Defendant:	CORNELIUS, R. P.

Offense for which Defendant Convicted:
CAPITAL MURDER

Charging Instrument: **INDICTMENT**	Statute for Offense: **N/A**
Date of Offense: **06/13/2011**	
Degree of Offense: **CAPITAL FELONY**	Plea to Offense: **NOT GUILTY**
Verdict of Jury: **GUILTY**	Findings on Deadly Weapon: **YES, A FIREARM**

Plea to 1st Enhancement Paragraph:	N/A	Plea to 2nd Enhancement/Habitual Paragraph:	N/A
Findings on 1st Enhancement Paragraph:	N/A	Findings on 2nd Enhancement/Habitual Paragraph:	N/A

Punished Assessed by: **JURY**	Date Sentence Imposed: **09/23/2015**	Date Sentence to Commence: **09/23/2015**

Punishment and Place of Confinement: **LIFE INSTITUTIONAL DIVISION, TDCJ**

THIS SENTENCE SHALL RUN **CONCURRENTLY.**

☐ **SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .**

Fine:	Court Costs:	Restitution:	Restitution Payable to:
$ N/A	As Assessed	$ N/A	☐ **VICTIM** (see below) ☐ **AGENCY/AGENT** (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was **N/A** .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time Credited:

From: 07/10/2013 to 09/23/2015	From: to
From: to	From: to
From: to	From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in **HarrisCounty, Texas**. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

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The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒**Jury**. Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐**Court**. Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐**No Election**. Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒**Confinement in State Jail or Institutional Division.** The Court **ORDERS**the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ** . The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐**County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the **Sheriff of Harris County, Texas** on the date the sentence is to commence. Defendant shall be confined in the **HarrisCounty Jail** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐**Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY.** The Court **ORDERS** Defendant to proceed immediately to the **Office of the Harris County District Clerk**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☒The Court **ORDERS** Defendant's sentence **EXECUTED**.

☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated. The Court further **ORDERS** that if the defendant is convicted of two or more offenses in a single criminal action, that each cost or fee amount must be assessed using the highest category of offense. Tex. Code Crim. P. art. 102.073.

Furthermore, the following special findings or orders apply:

DEADLY WEAPON.
THE COURT FINDS DEFENDANT USED OR EXHIBITED A DEADLY WEAPON, NAMELY, FIREARM , DURING THE COMMISSION OF A FELONY OFFENSE OR DURING IMMEDIATE FLIGHT THEREFROM OR WAS A PARTY TO THE OFFENSE AND KNEW THAT A DEADLY WEAPON WOULD BE USED OR EXHIBITED. TEX. CODE CRIM. PROC. ART. 42.12 §3G.

Signed and entered on 09/23/2015

X _____
STACEY W. BOND
JUDGE PRESIDING

Notice of Appeal Filed: 9-23-15

Mandate Received: _____ Type of Mandate: _____

After Mandate Received, Sentence to Begin Date is: _____

Jail Credit: _____
Def. Received on at ☐AM ☐PM
By: , Deputy Sheriff of Harris County

Clerk: **M OCHSNER**
Case Number:
Defendant: WILLIAMS, CHRISTOPHER
EN/KR04: LCBT: LCBU: EN/KR18:

Right Thumbprint

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I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this August 8, 2018

Certified Document Number: 67224643 Total Pages: 2

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

APPENDIX E

RECORD EXCERPT OF THE CHARGE CONFERENCE

MR. WAKEFIELD: I don't know about that.

THE COURT: All right. I'm going to ask the jurors.

(The following proceedings were had in open court:)

THE COURT: Ladies and gentlemen, we have to prepare the Court's charge. We've been working on it so it's mostly done, but we still have a few things to wrap up. I'm going to give you-all a choice. We can wrap up the charge, present the charge, and have arguments and you-all begin deliberations, but you might have to wait half an hour, that's before we read the charge and have an argument, okay. Or you-all can come back in the morning at 9:30 and we'll have arguments at that time and you can begin your deliberations tomorrow morning. You-all want to talk amongst yourselves, confer. Stay or go.

(Pause.)

A JUROR: Tomorrow.

THE COURT: All right. We'll see you-all tomorrow at 9:30. Please note no independent investigation. Don't talk about the case. We'll see you tomorrow at 9:30.

All rise for the jury, please.

(Jury out.)

MR. CORNELIUS: I'm ready to make my request.

THE COURT: All right.

MR. CORNELIUS: We talked about it informally.

THE COURT: All right. You want to put that on the record.

MR. CORNELIUS: Yes. I would like to have a lesser of prostitution, but I'm not sure how to make it a lesser of capital murder.

THE COURT: All right.

MR. CORNELIUS: That was a joke.

I'm going to request the lesser of murder. I realize it's a weak request on my part, since we didn't put on any evidence to establish that there was no robbery, but I feel compelled to make the request and let appellate lawyers that are a lot smarter than I am wrestle with it. The basis, though, the only basis I can think of is there is no direct evidence that anything was stolen or attempted to be stolen from the victim in the case. And the jury's free to believe all or part or none of the witnesses' testimony. Specifically the only way it comes in is through Mouton, who says the defendant says he was going to rob her, or rob him, rob Davis, the deceased, and if the jury chose not to believe that, then if you gave the charge they would be able to convict of the lesser included of murder. If you don't give the charge, they either convict of capital murder or let him go, and I think there's at least the threat of an argument that he's entitled to a charge, a lesser included charge of murder.

THE COURT: Any response?

MR. WAKEFIELD: Yes, Judge. You've got to have some evidence that suggests he only did the murder or only did the aggravated robbery. In this the only evidence that came in that suggests that he did it is going to be from Caleb Mouton and his suggestion is that he went in there with the intent to rob him and then murder him. That is only capital murder. Based on that, there is no other evidence that would precipitate a lesser included charge.

THE COURT: I'm inclined to agree. I don't think there's any evidence that if Mr. Williams is guilty he's only guilty of murder. So your request to have that lesser included is denied at this time. All right.

(Proceedings recessed until September 23, 2015.)

APPENDIX F

PETITIONER'S POST SUBMISSION BRIEF IN THE FOURTEENTH COURT OF APPEALS

No. 14 – 15 – 00836 – CR

In the
Court of Appeals
For the
Fourteenth District of Texas
At Houston

No. 1410165
In the 176th District Court
Of Harris County, Texas

CHRISTOPHER WILLIAMS
Appellant
V.
THE STATE OF TEXAS
Appellee

APPELLANT'S POSTSUBMISSION BRIEF

KEVIN P. KEATING
Attorney at Law
5208 Memorial Drive
Houston, Texas 77007
Tel.: 713/818-4319
kevin@keatinglawtx.com

ORAL ARGUMENT NOT REQUESTED

STATEMENT REGARDING ORAL ARGUMENT

This Court has already heard oral argument in this case. This brief is filed at the request of the panel to address certain issues that arose during argument regarding the proper mode of analysis in cases where issues involving the application of the *corpus delicti* rule arise, as well as the error involving the refusal to grant a jury instruction on the lesser included offense of murder.

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.2(a)(1)(A), a complete list of the names of all interested parties is provided below.

Appellant:

Christopher Williams

Counsel for the State:

Devon Anderson — District Attorney of Harris County

Chris Conrad — Assistant District Attorney on appeal

John Joseph Wakefield III — ADA at trial

Counsel for Appellant:

Kevin P. Keating — Counsel on appeal

R.P. "Skip" Cornelius — Counsel at trial

Trial Judge:

Hon. Stacey W. Bond — Presiding Judge

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TO THE HONORABLE FOURTEENTH COURT OF APPEALS:

STATEMENT OF THE CASE

On December 2, 2013, the State filed a complaint charging Christopher Williams (hereafter "Williams") with capital murder. A Harris County grand jury indicted him for that crime on February 18, 2014. Trial on the merits commenced on September 18, 2015 and concluded on September 23, 2015 when the jury found Williams guilty as charged in the indictment. (RR1 1; CR1 72, 74). As the State had not sought the death penalty, the trial court assessed punishment at imprisonment for life. (CR 74)(RR5 74). Williams immediately filed notice of appeal, and the trial court certified he had the right to do so. (CR 77-79). The case has been submitted, having been argued on June 14, 2017, at 10:30 a.m. During argument, the Court asked the parties to draft post-submission briefs addressing certain issues.

ISSUES PRESENTED

1. What is the proper method to analyze the sufficiency of the evidence that corroborates an extrajudicial confession, and is sufficient evidence to corroborate the extra-judicial confession present in this case?

2. Did the trial court err in denying a jury charge on the lesser-included offense of murder?

CORPUS DELICTI ISSUES

In this case, the primary evidence that Williams committed murder came from a jailhouse snitch named Caleb Mouton, an issue we discussed at length during oral argument. The question of how the court should look at the issue of whether the evidence corroborating the extrajudicial confession is sufficient is one of the issues on which the Court asked the parties to submit additional briefing.

According to Mouton, Williams admitted to him that he killed Davis. Additionally, Mouton gave a number of details about the offense that might only have come from the murderer. However, the main point here is the details relayed by Mouton at trial purport to come from an extrajudicial confession allegedly made by Williams. As such, Mouton's account of Williams alleged confession is subject to the *corpus delicti* rule, which requires that there be some evidence corroborating the *corpus delicti* of the crime. Here, there is no such corroboration, and the evidence is therefore insufficient to sustain Williams' conviction.

The Nature of the Corpus Delicti Rule:

During our oral argument in this case, the panel posed a number of questions related to the admissibility of the extrajudicial confession. I confess I was very puzzled at the time – there had been no real objection to the admission of that statement – certainly not one related to the *corpus delicti* rule. However, in researching these issues for this post-submission brief, it became apparent that

many states treat the establishment of the *corpus* of the charged crime as a predicate for the *admissibility* of an extrajudicial confession. In other words, in states that treat the issue this way, if the state does not establish the corpus of the crime, the defendant's extrajudicial confession may not even be admitted as evidence. *See, e.g., People v. Diaz*, 834 P.2d 1171, 1183-84 (Cal. 1992)(stating, "The *corpus delicti* rule is a rule of law that governs the admissibility of evidence."); *People v. Shoemake*, 20 Cal. 2nd 36, 41 (Cal. App. – 5th Dist. 1993, rev. denied)(noting the California *corpus delicti* rule "operates initially to establish the foundation for admission of a defendant's extrajudicial admissions and confessions."); *Barber v. State*, 952 So.2d 393, 435 (Ala. Crim. App. 2005)(noting, "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.")(citing *Robinson v. State,* 560 So.2d 1130, 1135-36 (Ala. Crim. App. 1989)).

Texas is not one of these states. As the State in the instant case helpfully supplied in its June 13, 2017 letter to this Court, *Leal v. State*, a case from the First Court of Appeals, nicely summed up the Texas rule. "The *corpus delicti* rule is one of *evidentiary sufficiency* affecting cases in which there is an extrajudicial confession." *Leal v. State*, No. 01-14-00972, slip op. at 10 (Tex. App. – Houston [1st Dist.] 2016, pet. ref'd)(emphasis supplied). The *Leal* court went on to say,

"[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*. (citing *Miller v. State*, 457 S.W.3d 919, 924 (Tex. Crim. App. 2015)). The *Leal* court also noted that, "The purpose of the *corpus delicti* rule is to ensure that a person is not convicted of a crime that never occurred, based solely on that person's extra-judicial confession." *Id*. (citing *Salazar v. State*, 86 S.W.3d 640, 644 (Tex. Crim. App. 2002)).

Determining the Sufficiency of Corroboration in a Case Implicating the Corpus Delicti Rule:

At oral argument, the panel asked both attorneys what they thought should be the appropriate way to analyze the sufficiency of the corroboration of the Appellant's extrajudicial confession. The Appellant argued that the Court should disregard the extrajudicial confession and determine if the remaining evidence showed that the crime had occurred. The State argued essentially the opposite position, suggesting that so long as the evidence corroborated the Appellant's extrajudicial confession in any of its details, then the *corpus delicti* rule had been satisfied.

The caselaw on this point is not entirely consistent. For example, in *Emery v. S*tate, the Court of Criminal Appeals said:

> Because the essential purpose of the corroboration requirement is to assure that no person be convicted without some ***independent evidence*** showing that the very crime to which he confessed was

> actually committed, we agree that the *corpus delicti* of capital murder includes more than merely homicide by criminal agency. [footnote deleted] In the present context, [murder committed in the course of kidnapping,] we hold that evidence independent of appellant's confession was required to show that his victim had been kidnapped. *Gribble*, 808 S.W.2d at 71.
>
> The ***independent evidenc***e need not connect the defendant to the crime; it need only show that a crime was committed. *Id*. In addition, such evidence need not be sufficient by itself to prove the offense; it need only be "some evidence which renders the corpus delicti more probable than it would be without the evidence". *Id*. at 71-72. (citation in original, citing *Gribble v. State*, 808 S.W.2d 65, 71 (Tex. Crim. App. 1990)(plurality opinion).

Emery v. State, 881, S.W.2d 702, 705 (Tex. Crim. App. 1994)(emphasis supplied). *See also Adames v. Sta*te, 353 S.W.3d 854, 859 (Tex. Crim. App. 2011)(noting in passing that the Court of Appeals had held that "the ***independent evidence*** was sufficient to show the *corpus delicti* of both the murder and the underlying felony, and therefore, the evidence was factually sufficient to support the conviction.")(emphasis supplied); *Carrizales v. S*tate, 414 S.W.3d 737, 740 (Tex. Crim. App. 2013)("The corpus delicti rule requires that 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." The purpose of the *corpus delicti* rule is to ensure "that a person would not be convicted based solely on his own false confession to a crime that never occurred."

These cases, by insisting that there be proof 'independent' of the extra-judicial confession, suggest that one should eliminate the extra-judicial confession

from the equation, and determine from the remaining evidence whether it sufficiently shows that someone committed the charged crime.

Unfortunately, the caselaw on this point is not so simple. For example, in *Gibbs v. State*, the Court of Criminal Appeals indicated:

> "Proof of the corpus delicti may not be made by an extrajudicial confession alone, but proof of the corpus delicti need not be made independent of an extrajudicial confession. If there is some evidence corroborating the confession, the confession may be used to aid in the establishment of the corpus delicti." *Gibbs v. State*, 819 S.W.2d 821, 833 (Tex. Crim. App. 1991)(citing *Self v. State*, 513, S.W.2d 832, 835 (Tex. Crim. App. 1974)).

The *Gibbs* Court went on to say, "…proof of the *corpus delicti* may not be made by an extrajudicial confession alone, but proof of the corpus delicti need not be made independent of an extrajudicial confession. If there is some evidence corroborating the confession, the confession may be used to aid in the establishment of the corpus delicti." *Id*. (citing *Dunn v. State*, 721 S.W.2d 325, 333-34 (Tex. Crim. App. 1989)).

The State of the law then, is unsatisfyingly unclear. On the one hand, cases from the Court of Criminal Appeals discuss the importance of evidence independent from the confession corroborating the corpus delicti of the crime. Yet, other cases indicate that corroboration can be sufficient if the other evidence in the case corroborates the extrajudicial confession.

In what appears to be the Court of Criminal Appeals last detailed look at the *corpus delicti* rule, it did not specifically address this issue. In *Miller v. State*, the Court of Criminal Appeals considered, among other things, the State's argument that Texas should abolish the corpus delicti rule. *Miller v. State*, 457 S.W.3d 919, 921 (Tex. Crim. App. 2015)(adopting a closely related crime exception to the corpus delicti rule). The Court rejected this argument, and in doing so it restated the familiar rule:

> The corpus delicti rule is one of evidentiary sufficiency affecting cases in which there is an extrajudicial confession. *See Hacker v. State*, 389 S.W.3d 860, 865 (Tex.Crim.App.2013). The rule states that, "[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; see *Salazar v. State*, 86 S.W.3d 640 (Tex.Crim.App.2002).
>
> The purpose of this judicially fashioned rule is to ensure "that a person would not be convicted based solely on his own false confession to a crime that never occurred." *See Carrizales v. State*, 414 S.W.3d 737, 740 (Tex. Crim. App. 2013).

The reality is that, over time, cases have said that there must be evidence independent of an extrajudicial confession tending to show that the charged crime occurred. At the same time, other cases say that the evidence is sufficient if the independent evidence corroborates the extra-judicial confession.

It appears that this apparent inconsistency arises from an imprecision in language. Courts have repeatedly said that the evidence cannot be sufficient when there is an extrajudicial confession unless the corpus delicti is corroborated by evidence independent of the confession. In other words, it is the corpus that must be corroborated. However, when one looks at the question whether the evidence as a whole is sufficient to sustain the conviction, the fact that the evidence corroborates the extrajudicial confession is a factor that one should consider in the broader evidentiary sufficiency context.

This interpretation protects the underlying purpose of the corpus delicti rule, and is highlighted by the facts that underlie this case. As we discussed at oral argument, the Appellant gave two extrajudicial confessions to a jailhouse snitch. In one, he said that he planned to hit a lick, and stole money from the victim's bra after he killed him. In the second, he told the snitch that he had lied to him the first time, and that he had only killed the transvestite prostitute victim after he received oral sex from him and then discovered the prostitute's male gender.

The fact that the prostitute was found wearing the bra does in some way corroborate the extrajudicial confession, but, if the Court finds that this helps to establish the corpus delicti of the crime, it must of course jettison any notion that the proof of the corpus of the crime should be independent of the extra-judicial confession.

Retaining the requirement of corroboration by ***independent evidence,*** the language that flows through all of these cases, is the only way to guard the underlying purpose of the corpus delicti rule and ensure that there is evidence, aside from the extra-judicial confession, that establishes the corpus. Once a Court gets over that hump, corroboration on the broader issue of sufficiency of the evidence to support the conviction, rather than sufficiency of the evidence to corroborate the confession and establish the corpus, is appropriate. In other words, the Appellant believes that this Court should, in evaluating whether his extrajudicial confession has been sufficiently corroborated, disregard the confession and determine whether the remaining evidence corroborates the corpus of the crime of capital murder committed during the course of robbery as charged in the indictment.

Independent Corroboration in this Case:

In its brief and at oral argument, the State offers essentially three items that it believes corroborates the corpus of the crime of capital murder committed during the course of a robbery. It's important to pause here and note that, it is not enough show a theft after a murder, there must be evidence tending to show that the theft was not an afterthought.

With that in mind, the State points to (1) testimony from a police officer that prostitutes often carry money (2) the victim in this case, a transvestite prostitute,

was found with no money on him, and (3) the victim was seen with a purse earlier in the day.

These are insufficient to corroborate that the murder was committed during the course of a robbery. Although an officer testified that prostitutes often carry money, this is a global statement that could apply to any situation. As Judge Brown put it during our argument, "This is getting awfully speculative." Indeed, there is ample reason to reject this claim as being corroborative at all. Consider how much delivery of a controlled substance cases this Court has considered where the fact pattern showed that the buy money was not recovered. Criminals tend to protect their earnings. If anything, the absence of money on the prostitute seems to reflect more his years of experience rather than the commission of a robbery. Even I tend to avoid carrying cash to avoid being robbed. The officer's testimony, and the fact that the victim was found with no cash on him, does not tend to make it more likely that a robbery occurred.

The fact that he was seen earlier in the day with a brown purse is also of no moment. There is no evidence when this occurred, there was no purse found at the scene, and no witness saw the shooter carrying a purse.

In short, there is no independent proof that would suggest that this was a murder committed in the course committing a robbery rather than simply a "common" murder.

What Should Happen as a Result of the Insufficient Corroboration of the Corpus Delicti?

An issue that we have not really discussed directly has to do with the consequence of Texas' decision to require independent proof of the corpus delicti, particularly with respect to the underlying crime that elevates certain murders to capital murders. In Texas the corpus of the underlying felony elevating a murder to capital murder must be proven beyond a reasonable doubt, and the Court of Criminal Appeals has repeatedly treated this as an issue of evidentiary sufficiency. It is, in other words, something that must be proven by the State at trial, and it is also something that elevates the punishment range from that available for a first degree felony to a death penalty eligible capital murder.

Under the rule established by the United States Supreme Court in *Apprendi v. New Jersey*, any fact, other than the fact of a prior conviction, 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 v. New Jersey*, 530 U.S. 466, 490 (2000); *see Ex parte Boyd*, 58 S.W.3d 134, 136 (Tex. Crim. App. 2001) (adopting the rule laid out in *Apprendi*).

The *Apprendi* rule implies two things for this case. Since the rule of corroboration of the *corpus* is something the State must prove to elevate the murder in question to capital murder, it must be (1) proven beyond a reasonable doubt and (2) submitted to the jury.

Although the quantum of evidence is not large, the jury must still be satisfied beyond a reasonable doubt that the appropriate level of corroboration was present. Moreover, the issue must be submitted to the jury.[1] As Appellant noted in his brief on the merits, the trial court should have instructed the jury on the corpus delicti rule. Appellant did not request this instruction, but the law applicable to the case demanded it. The absence of the instruction deprived the Appellant of the opportunity of an acquittal based on insufficient corroboration, an opportunity guaranteed to him under *Apprendi*.

As a result of the insufficient corroboration of the corpus of capital murder, this Court should order an acquittal for the offense of capital murder. Moreover, if the Court reaches the issue, the Court should hold that the trial court erred in failing to submit the issue to the jury.

ISSUES REGARDING THE DENIAL OF A JURY INSTRUCTION ON THE LESSER INCLUDED OFFENSE OF MURDER

As the Appellant noted in his original brief, a defendant is entitled to a jury charge on a lesser-included offense when lesser offense is included within the proof necessary to establish the offense charged and there is evidence that if the defendant is guilty, he is guilty of only the lesser offense. *Dickerson v. State*, 745 S.W.2d 401, 402 (Tex. App. -- Houston [14th Dist.] 1987, no pet.) (quoting *Bell v. State*, 693 S.W.2d 434, 439 (Tex. Crim. App. 1985)).

[1] I am aware of no Texas case applying *Apprendi* to the *corpus delicti* rule.

A trial court errs in denying a request for a lesser-included offense in a jury charge if (1) the offense in question is actually a lesser-included offense of the offense charged in the indictment and (2) there is some evidence in the record from which a rational jury could acquit the defendant of the greater offense while convicting him of the lesser-included offense. *Le v. State*, 479 S.W.3d 462, 472-73 (Tex. App. – Houston [14th Dist.] 2015, no pet.)(citing *Threadgill v. State,* 146 S.W.3d 654, 665 (Tex. Crim. App. 2004); *Delacruz v. State,* 278 S.W.3d 483, 488 (Tex. App. – Houston [14th Dist.] 2009, pet. ref'd)).

In determining whether the second condition is satisfied, a reviewing court should review all of the evidence presented at trial without considering its credibility or whether it conflicts with other evidence. *Le*, 479 S.W.3d at 473. *Moore v. State,* 969 S.W.2d 4, 8 (Tex.Crim.App.1998); *Delacruz,* 278 S.W.3d at 488. Anything more than a scintilla of evidence may be sufficient to entitle a defendant to an instruction on the lesser-included offense, regardless of whether the evidence is weak, impeached, or contradicted. *See Cavazos v. State,* 382 S.W.3d 377, 383 (Tex. Crim. App. 2012); *Hall v. State,* 225 S.W.3d 524, 536 (Tex. Crim. App. 2007).

Here, the Appellant's second statement to Mouton, the jailhouse snitch, indicated that he received oral sex from the prostitute, not realizing his true gender until after the sex act had been completed. He suggested that, after that point, the

two struggled over the gun, and the victim was shot during that struggle. If the jury believed this evidence, then it would have properly convicted him of the lesser offense of murder. In other words, this is evidence that, if believed, shows that, if the Appellant was guilty of any crime, he was only guilty of murder (rather than capital murder). It meets the test for the submission of an instruction on the lesser-included offense of murder

The Appellant asked for and was denied an instruction on the lesser-included offense of murder. Accordingly, this Court should reverse his conviction.

CONCLUSION AND PRAYER

Williams believes that this Court should reverse judgment of the trial court and remand the case with instructions that it enters a judgment of acquittal. However, Williams acknowledges that this result appears to be precluded under the Court of Criminal Appeals holdings in *Thornton* and *Bowen*. If this result is indeed precluded by that authority, then, (1) in light of the failure of the State to corroborate the corpus delicti of the crime of capital murder, this Court should order an acquittal of the crime of capital murder; and (2) in light of the egregious harm he suffered from the two jury charge errors present in this case, this Court should reverse the judgment of the Court of Appeals and remand it with orders to conduct a new trial on the offense of murder.

/s/ *Kevin P. Keating*

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CERTIFICATE OF SERVICE

The Appellant has served copy of the foregoing instrument on the State's attorney via the E-file system. The State's attorney maintains the following physical address:

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1201 Franklin, Suite 600
Houston, Texas 77002

/s/ *Kevin P. Keating*

_____

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Date: June 22, 2017

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this computer-generated document has a word count of 4206 words, based upon the representation provided by the word processing program that was used to create the document.

/s/ *Kevin P. Keating*

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APPENDIX G

THE STATE OF TEXAS'S POST SUBMISSION BRIEF IN THE FOURTEENTH COURT OF APPEALS OF TEXAS

No. 14-15-00836-CR

In the
Court of Appeals
for the
Fourteenth Judicial District of Texas
at Houston

No. 1410165
In the 176th District Court of
Harris County, Texas

CHRISTOPHER WILLIAMS
Appellant
V.
THE STATE OF TEXAS
Appellee

STATE'S POST-SUBMISSION BRIEF

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ORAL ARGUMENT NOT REQUESTED

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. P. 9.4(g) and TEX. R. APP. P. 39.1, the State does not request oral argument.

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.2(a)(1)(A), a complete list of the names of all interested parties is provided below.

Counsel for the State:

Kim Ogg — District Attorney of Harris County

John Wakefield — Assistant District Attorney at trial

Chris Conrad — Assistant District Attorney on appeal

Appellant or criminal defendant:

Christopher Williams

Counsel for Appellant:

R. P. "Skip" Cornelius — Attorney at trial

Kevin Keating — Attorney on appeal

Trial Judge:

Hon. Stacey Bond

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TO THE HONORABLE COURT OF APPEALS:

STATEMENT OF THE CASE

Appellant was charged with the offense of capital murder (3RR 15). Appellant entered a plea of not guilty and the case proceeded to jury trial (3RR 16). The jury found appellant guilty of the charged offense and sentenced him to life in prison (5RR 73-74). The court certified appellant's right to appeal, and appellant filed a timely notice of appeal (CR 77-79).

REPLY TO APPELLANT'S FIRST ISSUE

Appellant argues in his post-submission brief that Texas case law is inconsistent regarding the type of evidence needed to satisfy the *corpus delicti* requirement (PSAB 7). Appellant acknowledges that the Court of Criminal Appeals has stated that, "…proof of the *corpus delicti* need not be made independent of an extrajudicial confession. If there is some evidence corroborating the confession, the confession may be used to aid in the establishment of the *corpus delicti*." *Gibbs v. State*, 819 S.W.2d 821, 833 (Tex. Crim. App. 1991) (*citing Dunn v. State*, 721 S.W.2d 325, 333-334 (Tex. Crim. App. 1986). However, appellant argues that other cases require that the *corpus delicti* be established completely independently of the corroborating confession (PSAB 6). The cases appellant cites do not support his position.

Appellant relies most heavily on *Emery v. State* to support his argument. *Emery v. State,* 881 S.W.2d 702, 705 (Tex. Crim. App. 1994). *Emery* states that some independent evidence showing that the crime has been committed is required to

establish the *corpus delicti* of the offense but also explains that the evidence, "need not be sufficient by itself to prove the offense; it need only be some evidence which renders the *corpus delicti* more probable than it would be without the evidence." *Id.* Appellant argues that this requirement is in conflict with the Court of Criminal's statement in *Gibbs* that, if some evidence corroborates the confession, then the confession may be used along with the independent evidence to satisfy the *corpus delicti* requirement (AB 6). However, in both cases, the Court of Criminal Appeals explains that to satisfy the *corpus delicti* requirement, the State must present some evidence—independent of the defendant's statement—that renders the corpus delecti more probable than it would be without that evidence.

The Court of Criminal Appeals states in *Gibbs* that if there is some evidence corroborating the confession, the confession may be used to aid in the establishment of the *corpus delicti*. This is not inconsistent with the requirement in *Emery* that to satisfy the *corpus delicti* requirement, there must be some evidence which renders the *corpus delicti* more probable than it would be without the evidence. In both cases, the Court of Criminal Appeals requires some independent evidence that makes the commission of the underlying offense more probable. The independent corroborative evidence in *Gibbs* is the evidence that renders the corpus delicti more probable; it just does so in conjunction with the defendant's statement. Appellant is unable to show that *Emery*—or any other case—supports his claim that a reviewing

court must disregard a defendant's confession when independent evidence corroborates that confession (PSAB 9).

In fact, the Court of Criminal Appeals has explained that, "it is well settled that if there is some evidence corroborative of the confession, the confession may be used to establish the corpus delecti." *Wooldridge v. State*, 653 S.W.2d 811, 816 (Tex. Crim. App. 1983). The Court of Criminal Appeals more recently rearticulated this rule in *Salazar v. State*, 86 S.W.3d 640, 645 (Tex. Crim. App. 2002) ("if some evidence exists outside of the extra-judicial confession which, considered alone or in connection with the confession, shows the crime occurred" than the *corpus delecti* rule is satisfied). Appellant has failed to offer any case law explicitly stating that a defendant's confession cannot be used along with independent evidence to establish the *corpus delicti* of a crime if that statement has been corroborated by independent evidence. Therefore, appellant's assertion that the state of *corpus delicti* law is unclear is simply false (PSAB 6). As noted above, the Court of Criminal Appeals has made it clear that a defendant's confession can be used to establish the *corpus delicti* of an offense as long as it is supported by independent corroborative evidence.

In appellant's case, evidence offered by the police that the complainant was wearing a bra is independent evidence that corroborates appellant's statement that he took money from the complainant's bra (4RR 21; 5RR 15). In addition, other details in appellant's statement were also corroborated by independent evidence including the caliber of the gun used in the murder, the fact that there was a male and female

witness that saw appellant as he fled from the scene, and the fact that appellant jogged away from the scene (4RR 19-21; 5RR 11-17). This evidence all corroborates appellant's confession. As a result, the trial court could have used appellant's confession, along with this independent evidence, to determine that the *corpus delicti* of robbery had been satisfied. Because this evidence makes it more probable that the complainant was robbed, it satisfies the *corpus delicti* requirement.

However, even if this Court was prevented from using appellant's confession along with independent evidence that corroborated the confession to establish the *corpus delicti*, this rule would still be satisfied as to the robbery component of appellant's case. All that is required to satisfy the *corpus delicti* requirement is "some evidence which renders the commission of the offense more probable than it would be without the evidence." *Chambers v. State*, 866 S.W.2d 9, 15 (Tex. Crim. App. 1993), *cert. denied*, 511 U.S. 1100. As noted in the State's original brief, evidence that the complainant was working as a prostitute and seen with a purse earlier in the day along with evidence that the complainant was discovered shortly after the murder without a purse or any money, is some evidence that makes it more likely that the underlying offense of robbery was committed (3RR 179, 219-24). In addition, evidence that a suspect was observed running from the scene of the offense holding something white is additional evidence that makes it more likely that the complainant was robbed (3RR 230, 255). For these reasons, the trial court did not err when it determined that the State had satisfied the *corpus delicti* requirement for the underlying offense of robbery.

Appellant next argues—without citing any authority to support his conclusion—that the trial court erred by not submitting the *corpus delicti* issue to the jury (PSAB 12). However, in *Baldree v. State*, the Court of Criminal Appeals explained that a trial court does not need to give a jury instruction requiring independent corroboration of the perpetrator's confession when the evidence sufficiently establishes the *corpus delicti*. *Baldree v. State*, 784 S.W.2d 676, 686 (Tex. Crim. App. 1989) (holding that "a trial judge need not instruct the jury on corroboration when the *corpus delicti* is established by other evidence). Because the trial court correctly determined that the *corpus delicti* requirement of robbery had been satisfied, it did not commit error by choosing not to charge the jury on this issue. The jury was, of course, still required to find that appellant committed every element of the charged offense (including the element that the murder was committed in the course of appellant committing or attempting to commit robbery). However, because the trial court correctly determined that independent evidence satisfied the *corpus delicti* requirement, the jury was able to consider appellant's admission that he robbed the complainant when determining whether the State proved the robbery element of the offense. For this reason, the court did not err by choosing not to submit the *corpus delicti* issue to the jury.

REPLY TO APPELLANT'S SECOND ISSUE

In appellant's final issue, he argues that the trial court erred by failing to include a lesser-included offense instruction of murder in the jury charge. He argues that his

second confession to Mr. Mouton is some evidence that, if guilty, he is only guilty of the lesser-included offense of murder (PSAB 12-13). In his post-submission brief, appellant strongly implies that he told Mr. Mouton that he wanted to rob the complainant in his first statement but that in his second statement he denied the robbery and stated that he killed the complainant after learning that he was a man during oral sex (PSAB 8). If appellant had in fact denied his intent to rob the victim in his second statement, this statement in conjunction with his claim that he killed the complainant when he noticed that he was male would certainly have been entitled to the lesser-included offense instruction of murder. *See Goad v. State*, 354 S.W.3d 443, 447-48 (Tex. Crim. App. 2011)(to prevail on an appeal of a trial court's refusal to include a lesser-included offense, an appellant is required to point to affirmative evidence in the record that would permit a rational jury to conclude that the appellant committed only the lesser included offense). However, appellant never denied robbing the complainant. In his second statement, appellant reiterated that he intended to rob the complainant but explained that the complainant seemed suspicious so he decided to obtain oral sex from him before completing the robbery (4RR 28-29). The lie that appellant refers to in his brief was his initial claim that his DNA was found in spit near the complainant and not in semen located inside the complainant's mouth; not that he had robbed the complainant (4RR 27).

Even if appellant's admission—that he intended to rob the complainant and in fact did rob the complainant—is set aside under *Bullock*, his remaining statements do

not provide some evidence that he is guilty only of the lesser offense of murder. *Bullock v. State*, 509 S.W.3d 921 (Tex. Crim. App. 2016). While the Court of Criminal Appeals explained in *Bullock* that the jury was entitled to disbelieve some of a defendant's statements while believing other statements, the court reiterated its earlier holding that, "it is not enough that the jury may disbelieve crucial evidence pertaining to the greater offense, but rather there must be some evidence directly germane to the lesser-included offense for the finder of fact to consider before an instruction on a lesser-included offense is warranted." *Id. quoting Sweed v. State*, 351 S.W.3d 63, 68 (Tex. Crim. App. 2011).

Unlike in *Bullock*, in appellant's case, there are no additional details that are directly germane to the lesser-included offense. The addition of details that imply that appellant killed the complainant based on his gender does not show that, if appellant is guilty, he is only guilty of the offense of murder. This statement in no way negates appellant's other admission that he decided to receive oral sex to facilitate his robbery of the complainant. Even if his robbery statements are set aside, appellant's claim to have killed the complainant as a result of realizing his gender, is not some evidence that appellant is only guilty of murder because this statement does not preclude the possibility that appellant killed the complainant during the course of a robbery while he was receiving oral sex from the complainant.

If appellant had testified that he did not rob the complainant or if other evidence had been offered at trial that, if believed, showed that appellant did not rob

the complainant, than appellant would have been entitled to a lesser-included murder instruction. However, while appellant's statement that he shot the complainant upon realizing that he was a man is some evidence that appellant is guilty of murder, it is not some evidence that he is only guilty of murder since this statement is compatible with a capital murder fact scenario in which appellant solicited oral sex from the complainant in an attempt isolate and rob him and then shot the complainant upon realizing that he was a man.

In summary, there is no affirmative evidence in the record to support the conclusion that appellant is only guilty of the offense of murder. It is not enough for the jury to disbelieve appellant's admission that he intended to rob the complainant. *See Skinner v. State*, 956 S.W.2d 532, 543 (Tex. Crim. App. 1997). Therefore, appellant's request for a lesser-included murder instruction was properly denied.

This Court recently analyzed a similar claim in *Siros v. State*, No. 14-15-00519-CR, 2017 WL 1415065 (Tex. App.—Houston [14th Dist.] April 18, 2017, no pet.) (mem. op., not designated for publication). In that case, this Court rejected the defendant's argument that evidence that he threated to "kick [the complainant's] ass" entitled him (in his murder trial) to the lesser-included offense of aggravated assault. *Id.* at 6. This Court concluded that the addition of those lesser threats is not the same as testimony that appellant lacked the intent to kill. *Id.* at 7.

This Court's logic in *Siros* applies to appellant's case. The addition of details that appellant engaged in oral sex with the complainant and shot him upon

discovering that he was a man, is not the same as testimony that appellant lacked the intent to rob the complainant. As appellant's own statement demonstrates, it is possible for a defendant to both kill a complainant during oral sex upon discovering his gender and also to commit murder in the course of committing or attempting to commit a robbery. For this reason, appellant's statements regarding killing the complainant during oral sex do not constitute some evidence that show that appellant is guilty only of the lesser-included offense of murder. Therefore, the trial court did not err by choosing not to include the lesser-included offense of murder in the jury charge.

CONCLUSION

The State of Texas respectfully urges the Court to overrule appellant's points of error and affirm his conviction.

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CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this computer-generated document has a word count of 2,810 words, based upon the representation provided by the word processing program that was used to create the document. TEX. R. APP. P. 9.4(i).

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CERTIFICATE OF SERVICE

The State will send a copy of the foregoing instrument to appellant's attorney via TexFile at following address:

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Date: August 18, 2017

APPENDIX H

PETITIONER'S ORIGINAL BRIEF ON THE MERITS IN THE FOURTEENTH COURT OF APPEALS OF TEXAS

No. 14 – 15 – 00836 – CR

In the
Court of Appeals
For the
Fourteenth District of Texas
At Houston

No. 1410165
In the 176th District Court
Of Harris County, Texas

CHRISTOPHER WILLIAMS
Appellant
V.
THE STATE OF TEXAS
Appellee

APPELLANT'S BRIEF ON THE MERITS

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ORAL ARGUMENT REQUESTED

STATEMENT REGARDING ORAL ARGUMENT

This case presents issues of first impression involving the application of the *corpus delicti* rule of evidentiary sufficiency and its interplay with Code of Criminal Procedure Article 36.14. Therefore, pursuant to TEX. R. APP. P. 9.4(g) and TEX. R. APP. P. 39.1, counsel for Appellant respectfully requests oral argument.

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.2(a)(1)(A), a complete list of the names of all interested parties is provided below.

Appellant:

Christopher Williams

Counsel for the State:

Devon Anderson — District Attorney of Harris County

Alan Curry — Assistant District Attorney on appeal

John Joseph Wakefield III — ADA at trial

Counsel for Appellant:

Kevin P. Keating — Counsel on appeal

R.P. "Skip" Cornelius — Counsel at trial

Trial Judge:

Hon. Stacey W. Bond — Presiding Judge

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TO THE HONORABLE FOURTEENTH COURT OF APPEALS:

STATEMENT OF THE CASE

On December 2, 2013, the State filed a complaint charging Christopher Williams (hereafter "Williams") with capital murder. A Harris County grand jury indicted him for that crime on February 18, 2014. Trial on the merits commenced on September 18, 2015 and concluded on September 23, 2015 when the jury found Williams guilty as charged in the indictment. (RR1 1; CR1 72, 74). As the State had not sought the death penalty, the trial court assessed punishment at imprisonment for life. (CR 74)(RR5 74). Williams immediately filed notice of appeal, and the trial court certified he had the right to do so. (CR 77-79).

ISSUES PRESENTED

1. Is the evidence insufficient to support the conviction in light of the complete absence of evidence to corroborate the *corpus delicti* of the aggravating element of aggravated robbery used to elevate this case to capital murder?

2. Did the trial court err in failing to *sua sponte* instruct the jury on the *corpus delicti* rule?

3. Did the trial court err in denying a jury charge on the lesser-included offense of murder?

4. What should this Court order on remand?

STATEMENT OF FACTS

The Initial Crime:

About thirty minutes after midnight on June 13, 2011, Houston Police Department Patrol Officer Taylor-Williams was dispatched to a shooting that had just occurred at 13333 Northborough. (RR3 29-31). This was a location inside an apartment complex. (RR3 34). 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).

Officer Taylor-Williams recognized the deceased individual as someone that she often saw walking up and down Northborough 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." (RR3 38). She talked to him on occasion and had spoken with him a few days before. (RR3 38). She testified she told him he should "get off the street" or he would "get hurt." (RR3 38). She said this because "prostitutes get victimized a lot, and he's a man wearing a dress." (RR3 38).

Asked by the prosecutor what she meant, Officer Taylor-Williams replied, "They get robbed, beaten, hurt." (RR3 39). She worried this would happen to him because "he's a man wearing a dress and they get taken advantage of. They carry cash on 'em, so somebody eventually was going to hurt him or rob." (RR3 39).

Seeing him dead before her, she felt bad knowing he had experienced a "hard life." (RR3 39).

Officer Taylor-Williams described him, noting the arms were actually placed on the body "[k]ind of like he was protecting, shielding himself."[1] (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).

While she was guarding the scene, several people came forward. Joseph Powell approached and told the officer he was the one who had dialed 911. (RR3 42-43). A couple, Michelle Smith and Christen Rogers approached other officers, and all were taken to the homicide division to discuss what they had seen. (RR3 44).

After police talked to their witnesses, they learned that the witnesses had seen a black male, estimated between 35 and 30 years old running from the scene immediately after they heard a gunshot. (RR3 72). They described him as thin but muscular with a low style haircut. (RR3 72). He had been wearing a white muscle shirt and black athletic pants, "like sweatpants." (RR3 72). This was all they had to "go on" at that point in their investigation. (RR3 72). They were not even sure whether the last person to have had sex with the deceased was also the

[1] Later, another investigator testified that his arms were "obviously … over our complainant's

person who had killed him. (RR3 76). An investigator testified that it looked like the shooting and the sex act were contemporaneous. (RR3 85-86).

Scene investigators photographed shoe impressions that might have been left by the individual that fled the scene on foot. (RR3 104). They collected samples from a cold beer can in an effort to find DNA. (RR3 103-105). They collected samples from the stain that appeared to be semen, also hoping to find DNA evidence. (RR3 114-16). Finally, they recovered a fired cartridge casing. (RR3 119).

One investigator and his partner who drove to the scene later that morning were flagged down by an individual who told him that the victim's name was Nathan Davis (hereafter "Davis") who lived at 727 Rush Creek # 511, a location within a mile of the scene. They went to that address, verified that Davis lived there and learned that the homeowner had seen Davis earlier that day with a small brown purse. (RR3 178-79).

Police worked with one witness to develop a composite sketch, and they conducted a press conference where Davis' murder was reported with a minimum of information. The sketch was broadcast at the press conference, but details about the scene were not disclosed. (RR3 179-82).

Police were unable to develop any suspects, and by June 29, the case was "closed" pending new investigative leads. The case would remain inactive "for around two years." (RR3 190-91).

Williams Emerges as a Suspect:

In September 2013, Williams emerged as a suspect when DNA taken from the scene apparently matched samples known to have been taken from Williams. (RR3 191). Police would later collect additional known samples from Williams to compare to the samples that were recovered at the murder scene. (RR3 202-205). Subsequent testing showed that the semen recovered from the ground was a single source sample, and that the likelihood of a match to another African-American male was only one in 390 quintillion. (RR4 140). Testing of other samples showed similar likelihoods, including one mixed sample taken from the lips of Davis during the autopsy where the likelihood of another African-American male matching the sample was one in 170 million. (RR4 146).

After the initial DNA hit, police met and spoke with Williams on September 19, 2013. (RR3 198). They showed him certain pictures of the victim and a photo of the semen stain on the ground. (RR3 198). According to police, they did not tell him what the victim was wearing, where he had been shot, or that a casing had been found at the scene. (RR3 199). They claimed they did not tell him the caliber of the bulled that killed Davis. (RR3 200). According to police, Williams did not

give them any new information, and they did not yet seek murder charges against him. They did seek to re-interview some of the witnesses who were near the scene of the murder when it occurred.

Other Witnesses:

Police spoke with several civilian witnesses including Michelle Smith and Christen Rogers. Michelle Smith lived at the Canfield lakes apartments with her daughter's father, Joseph Powell. (RR3 215-17). She had been arguing with Joseph, and she left to get away from the tension. (RR3 217-18). Powell's brother Christen Rogers accompanied her, and they stopped by a nearby convenience store. (RR3 220). She noticed a male prostitute walking the area wearing a skirt and a short top. (RR3 221). After they left the store, Smith and Rogers stopped and sat near a bus stop. (RR3 223). They talked about the argument and the situation with Powell. (RR3 223). After about five to ten minutes, they heard a gunshot. (RR3 225).

According to Smith, she and Christen got up and walked toward the corner. (RR3 226-27). At that point, "The man came running, a man came running from Northborough Drive." (RR3 227). Smith remembered he had a tattoo on his arm and thought he had a "rag on." He was black and wearing a sleeveless shirt, and dark blue or black jeans. (RR3 228, 243). She saw him carrying a dark, big gun. (RR3 229). She also noted the man was talking on a phone, and she heard him tell

someone to come pick him up by the Sego apartments. (RR3 230). She "saw something white" that might have been his hands wrapped around the gun. (RR3 230).

When Police showed Smith a photo array containing Williams photograph, she was unable to identify anyone. (RR3 210).

Christen Rogers echoed Smith's testimony. He noted she had been arguing with Joseph, and he told her to go outside and calm down, maybe smoke a cigarette. (RR3 249). As they walked out, he could see a man dressed as a woman standing on or near a manhole. (RR3 250). Rogers had never seen this person before. (RR3 251).

Once they heard the gunshot, they walked toward the sound. (RR3 253-54). Rogers described the noise as "real slight, like, pow." (RR3 254). As they looked in the direction of the shooting, he saw a man standing there dressed in a white muscle shirt with some "like black pants on." (RR3 255). He was standing there, "fiddling on something down by his waist or something. (RR3 254). He couldn't say what the man had in his hands, but he remembered seeing something "white." (RR3 255). He said it could have been a towel or sock or something like that. (RR3 255). Rogers denied seeing the man carrying gun in his hand. (RR4 259). On the other hand, he did confirm that the man was on the phone. (RR3 259). Rogers indicated that he heard the man say, "… fool, where you at, … come get

me." (RR3 260). Rogers was also unable to identify anyone out of a police photo spread. (RR3 261).

After the DNA came back connecting Williams to the scene of the murder and the body of Davis, they could at least show that there had been a sexual encounter between the two. But there was not yet enough proof to charge Williams with murder.

Caleb Mouton – Jailhouse Snitch:

Caleb Mouton (hereafter "Mouton"), an old acquaintance of Williams, was the backbone of the State's case. Mouton grew up with Williams and testified he had known him for 12-14 years. (RR4 13). He testified that in October 2013 he became aware that Williams had spoken with a detective. (RR4 14). According to Mouton, Williams told him he might have messed up. (RR4 14). Mouton said that Williams believed, after talking to a 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 different times about the details of the murder. During the first conversation, Mouton indicated that Williams told him he had spotted a prostitute walking on the side of some apartments and told a

companion that he wanted to "hit the lick." (RR4 16).[2] 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). 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).

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 situation and they "began to struggle for the pistol." (RR4 20). Mouton claimed that Williams said he gained control of the situation and shot the 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 that he took the money from the prostitute's chest. (RR4 21). Mouton thought he used the word "shirt" or "bra."

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

(RR4 21). According to Mouton, Williams told him he saw a couple nearby and considered shooting them as well, but decided not to. (RR4 22).

Mouton testified that he was with Williams when Williams learned he had been charged with capital murder arising out of this incident, and that Williams had broken down in tears. (RR4 26). According to Mouton, 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 a guy 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 a guy, "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 testified that Williams had been on the phone with his companion while the prostitute was performing oral sex on him. (RR4 35-36).

Apparently, during a conversation with the prosecutor shortly before trial, Mouton indicated that Williams had said he might have shot him in the chest.

(RR4 32-33). Referring to the first conversation he had with Williams, Mouton said be might have been confused because he knew "he pulled the money off his chest." (RR4 33).

The Charge Conference and Jury Instructions:

On the day before the trial concluded, the following colloquy occurred regarding the issue of jury instructions on lesser-included offenses.

By Defense Counsel: I'm going to request the lesser of murder. I realize it's a weak request on my part, since we didn't put on any evidence to establish that there was no robbery, but I feel compelled to make the request and let appellate lawyers that are a lot smarter than I am wrestle with it. The basis, though, the only basis I can think of is there is no direct evidence that anything was stolen or attempted to be stolen from the victim in the case. And the jury's free to believe all or part or none of the witnesses' testimony. Specifically the only way it comes in is through Mouton, who says the defendant says he was going to rob her, or rob him, rob Davis, the deceased, and if the jury chose not to believe that, then if you gave the charge they would be able to convict of the lesser included of murder. If you don't give the charge, they either convict of capital murder or let him go, and I think there's at least the threat of an argument that he's entitled to a charge, a lesser included charge of murder.

By the Court: Any response?

By the Prosecutor: Yes, Judge. You've got to have some evidence that suggests he only did the murder or only did the aggravated robbery. In this the only evidence that came in that suggests that he did it is going to be from Caleb Mouton and his suggestion is that he went in there with the intent to rob him and then murder him. That is only

capital murder. Based on that, there is no other evidence that would precipitate a lesser included charge.

By the Court: I'm inclined to agree. I don't think there's any evidence that if Mr. Williams is guilty he's only guilty of murder. So your request to have that lesser included is denied at this time. All right. (RR4 207-08)

The next day, before the Court read the charge to the jury, it asked both sides if they had any objections to it. Defense counsel replied that he had no objections other than the ones he had raised the day before and that had already been ruled on. (RR5 29).

SUMMARY OF THE ARGUMENT

1. The evidence is insufficient to sustain Williams' conviction under the *corpus delicti* rule because there is no evidence to corroborate his extrajudicial confession with respect to the aggravating offense of robbery.

2. The trial court erred in failing to instruct the jury on the *corpus delicti* rule, and this error egregiously harmed Williams.

3. The trial court erred in refusing Williams request for a jury instruction on the lesser included offense of murder. Its error egregiously harmed Williams, and certainly caused him "some harm" under the applicable error analysis.

4. Because the evidence was insufficient to support his conviction for capital murder, this Court should reverse the judgment of the Court of appeals and enter a judgment of acquittal. However, because this result appears to be precluded by the relevant authority from the Court of Criminal Appeals, this Court should reverse the trial

court's judgment and order a new trial in light of the charger errors in the case.

APPELLANT'S FIRST ISSUE FOR REVIEW

In this case, the primary evidence that Williams committed murder came from a jailhouse snitch named Caleb Mouton. According to Mouton, Williams admitted to him that he killed Davis. Additionally, Mouton gave a number of details about the offense that might only have come from the murderer. However, the main point here is the details relayed by Mouton at trial purport to come from an extrajudicial confession allegedly made by Williams. As such, Mouton's account of Williams alleged confession is subject to the *corpus delicti* rule, which requires that there be some evidence corroborating the *corpus delicti* of the crime. Here, there is no such corroboration, and the evidence is therefore insufficient to sustain Williams' conviction.

Capital Murder:

A person who intentionally kills another in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction or retaliation commits capital murder. TEX. PENAL CODE § 19.03(a)(2)(West 2013). To sustain a conviction for capital murder where the aggravating element is that the murder was committed in the course of committing or attempting to commit a robbery, the evidence must show that the killer's intent

to rob was formed before or at the time of the murder. *See Alvarado v. State*, 912 S.W.2d 19, 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)).

The Corpus Delicti Rule:

First, under the "*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 referred to as the "*corpus delicti*." *Id.*

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 has 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 (emphasis supplied).

The *corpus delicti* of any crime simply consists of the fact that someone has committed the crime in question. *Fisher v. State,* 851 S.W.2d 298, 302-03 (Tex. Crim. App. 1993). The *corpus delicti* of murder is established if the evidence shows the death of a person caused by the criminal act of another. *Id.* "The rule does not require that the independent evidence fully prove the *corpus delicti*, only that it tend to prove the *corpus delicti*." *Id.* at 302–03. The rule also does not require that the independent evidence corroborate the identity of the perpetrator; that may be established by the extrajudicial confession alone. *Gribble v. State,* 808 S.W.2d 65, 70 (Tex. Crim. App.1990).

However, since the *corpus delicti* rule applies to the underlying aggravating offense in a capital murder case, in this case there must be some evidence tending to show that Williams committed or attempted the aggravating offense of robbery. Further, there must be some corroborating evidence to suggest that Williams formed the intent to rob the complainant before or at the time of the murder. It cannot have been an afterthought. Here, there was no such corroboration.

The Utter Lack of Corroborating Evidence with Respect to Robbery Renders the Evidence Insufficient to Support the Capital Murder Conviction:

Certainly, Mouton's account of the murder is corroborated by much of the evidence collected at the scene, including DNA that connected Williams to Davis with an extraordinarily high probability. But, there is *no* evidence that the murder

was committed during or in the furtherance of a robbery. The evidence here is sufficient to establish and corroborate a murder – but not a capital murder.

Here, the main question is whether any evidence other than William's alleged statements to Mouton showed the *corpus delicti* of capital murder committed during the course of a *robbery*. Again, there is none.

Police testified that they had learned that Davis left his home earlier in the day with a small brown purse. (RR3 178-79). However, there was no testimony or evidence showing what time Davis left the home or when he may have been in possession of such a purse. Additionally, no purse was found at or near the scene, and no witness saw the shooter carrying a purse of any kind. (RR3 99-123, 178, 229-231, 255, 259-60).

Mouton said that Williams told him he had taken money from Davis' bra after he killed him. (RR4 20-21). He had also testified that Williams had told him that he was driving around with his friend, noticed Davis, and said that he wanted to "hit that lick," meaning that he wanted to rob Davis. (RR4 15-16). But there is literally no other evidence that any money was taken or intended to be taken from Davis' bra or from anywhere else on his body or that Williams intended to rob Davis.

Police speculated at trial that the murder might have been a capital murder because prostitutes often carry money on their person. For example, one investigator testified:

> Well, the victim in this case was, from the information that was provided to me, was prostituting in the area and had been out there throughout the night, and their findings when they arrived at the crime scene was there was no money, no personal wallet with the victim, so initially that led me to believe that perhaps this was a robbery that had gone bad and a capital murder. (RR3 177).

Of course, this is nothing more than rank speculation. The initial information police had indicated that Davis had left home with a purse. The eyewitnesses said they did not see the shooter fleeing with a purse, and no purse was found at the scene. This proves that the shooter did not take a purse from Davis. Police did testify that this was an extremely high crime area. Certainly, in such an area, it would make sense for anyone – including a street-smart prostitute – to keep little or no cash on his or her person.

Mouton claimed that Williams told him he took money from Davis' bra. (RR4 21-22). But the witnesses who saw the shooter did not see him carrying money. He was on the phone and carrying a gun. They saw him with something "white," but this is hardly evidence suggesting Williams took money from Davis.

Here, the evidence simply does not satisfy the corpus *delicti rule*. The State did not supply any evidence that a robbery occurred or that Williams contemplated

a robbery before the murder aside from his extrajudicial statements to Mouton, the jailhouse snitch.

Unusually, even the State seems to have recognized this and conceded the point at trial. During the charge conference while the parties were discussing whether the trial court should give a jury charge on the lesser-included offense of murder, the prosecutor made the following comment:

> Yes, Judge. You've got to have some evidence that suggests he only did the murder or only did the aggravated robbery. ***In this the only evidence that came in that suggests that he did it is going to be from Caleb Mouton and his suggestion is that he went in there with the intent to rob him and then murder him.*** That is only capital murder. Based on that, there is no other evidence that would precipitate a lesser included charge. (RR4 208).

If the "only" evidence to prove that the murder was committed in the course of the commission of a robbery comes from Williams' extra-judicial confession, as the State plainly agreed it did at trial, the evidence is not sufficient to comply with the *corpus delicti* rule.

Put simply, the evidence, while sufficient to prove murder, is insufficient to prove capital murder because it is insufficient to establish the *corpus delicti* of robbery. Event the State conceded this point at trial. Accordingly, this Court

should sustain Williams' first issue for review and find the evidence insufficient to support his conviction for capital murder.[3]

APPELLANT'S SECOND ISSUE FOR REVIEW

Code of Criminal Procedure Article 36.14 details the requirements and procedures for the delivery of the court's charge to the jury. TEX CODE CRIM. PROC. ANN. art. 36.14 (West 2013). It provides, "the judge shall... deliver to the jury... a written charge distinctly setting forth the law applicable to the case." *Id.* Article 36.14 also provides that, before the charge is read to the jury, "the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections." *Id.* However, the judge's duty to instruct the jury on the law applicable to the case exists even when defense counsel fails to object to inclusions or exclusions in the charge; this may require the judge to *sua sponte* provide the jury with the law applicable to the case, under Article 36.14.

Here, where the evidence supporting the State's for capital murder came entirely from his alleged extrajudicial confession to a jailhouse snitch, the *corpus delicti* rule was clearly applicable. Although Williams did not request such an instruction, the trial court's responsibility to instruct the jury on the law applicable

[3] What this Court should do as a result of the evidentiary insufficiency, among other things, is the subject of Williams' final issue for review.

to the case required it to explain the rule to the jury and apply it to the facts of the case. It's failure to do so egregiously harmed Williams.

As an initial matter, Williams must acknowledge that he is aware of no case squarely holding that a jury instruction on the *corpus delicti* rule may be required under Article 36.14 even in the absence of a request for such an instruction. Indeed, few cases have addressed situations where courts have instructed juries about the *corpus delicti* rule, and those that have either have simply observed that such an instruction was given, or held that, under the circumstances, no such instruction was required, or the point was inadequately briefed. *See, e.g., Cearley v. State*, No. 12-08-00050-CR (Tex. App. – Tyler June 30, 2009, no pet.) (mem. opinion)(holding that point arguing trial court should have given *corpus delicti* instruction was inadequately briefed); *Daniels v. State*, No. 02-06-258-CR (Tex. App. – Fort Worth August 21, 2007)(mem. opinion on reh'g)(holding that the appellant's requested *corpus delicti* charge misstated the law and the trial court therefore did no err in refusing to give it).

Nevertheless, the trial court did err in failing to *sua sponte* charging the jury on the *corpus delicti* rule. The most analogous situation is the requirement that a trial court instruct the jury on the accomplice witness rule because, in the appropriate case, the rule is the "law applicable to the case" for purposes of Article 36.14.

For example, in *Zamora v. State*, 411 S.W.3d 504 (Tex. Crim. App. 2013), the Court of Criminal appeals held, "we now expressly agree with those courts of appeals that have held that an accomplice-witness instruction is required when the evidence raises the question of whether a witness is an accomplice under a party-conspirator theory." *Id*. at 513. The Court went on to observe, "An examination of the plain language in the accomplice-witness statute reveals that it is, in all its variations, the law applicable to the case rather than a defensive issue." *Id*. Explaining this further, the Court noted:

> The accomplice-witness rule cannot be reasonably categorized as a defensive issue that a defense attorney might forego as a matter of strategy. *Cf. Posey v. State,* 966 S.W.2d 57, 61-62 (Tex. Crim. App. 1998)(mistake-of-fact instruction matter of strategy); *Granger v. State,* 3 S.W.3d 36, 38 (Tex. Crim. App.1999)(mistake of fact instruction); *Tolbert v. State,* 306 S.W.3d 776, 781 (Tex. Crim. App.2010) (lesser-included-offense instruction is matter of strategy to pursue outright acquittal); *Delgado v. State,* 235 S.W.3d 244, 250 (Tex. Crim. App. 2007) (limiting instruction is matter of strategy to minimize jury's recollection of unfavorable evidence).
>
> We agree with those courts that have observed that it is difficult to envision that any competent attorney would reasonably forego an accomplice-witness jury instruction as a matter of strategy based on his theory of the case. *See Freeman v. State,* 352 S.W.3d 77, 82 (Tex. App. –- Houston [14th Dist.] 2011, pet. ref'd); *Howard v. State,* 972 S.W.2d 121, 126 (Tex. App. – Austin 1998, no pet.).
>
> This is especially true in light of the legislative determination to disallow a conviction on the uncorroborated testimony of an accomplice based on concern that such witnesses may have incentives to lie or shift blame, and this concern is equally applicable whether the witness is alleged to be a direct party or a party to the offense as a co-conspirator. *See Blake v. State,* 971 S.W.2d 451, 454 (Tex. Crim.

> App. 1998)(observing that rule reflects legislative determination to view accomplice testimony with caution because accomplices often have incentives to lie to avoid punishment or shift blame).

Zamora, 411 S.W.3d at 510 (internal citations lightly edited).

In a footnote, the Court of Criminal Appeals further noted that "a trial court's burden to *sua sponte* instruct the jury on accomplice-witness testimony arises only when the evidence raises the issue." *Id*. (citing *Oursbourn v. State,* 259 S.W.3d 159, 180 (Tex. Crim. App. 2008) ("[i]f the evidence raises an issue" as to a witness's accomplice status, then "the trial court shall instruct the jury" on the accomplice-witness rule); *Medina v. State,* 7 S.W.3d 633, 642 (Tex. Crim. App. 1999) (holding that there was sufficient evidence to "raise[ ] a fact issue" as to one witness's accomplice status, thereby requiring accomplice-witness instruction for that witness, but finding evidence insufficient to warrant instruction as to other witnesses)). *Zamora*, 411 S.W.3d at 513 n. 4. Similarly, the Court noted that, if the evidence did not raise the issue of an accomplice witness, such an instruction need not be given. *Id*.

In the instant case, as Williams has shown above, the evidence, or more precisely, the lack thereof with respect to the aggravating offense of robbery, clearly implicates the *corpus delicti* rule. Further, like the accomplice witness rule, it is difficult to conceive of a reason that an attorney would forego asking for a jury instruction on the issue when the weakness in the State's case, as it so obviously

does here, implicates the rule. The *corpus delicti* rule more resembles the "substantive" nature of the accomplice witness rule than the "defensive" nature of instructions on issues like mistakes of fact, the impacts of extraneous offenses, or lesser-included offenses. The *corpus delicti* rule is law "applicable to the case," and the trial court erred when it failed to instruct the jury on it.

Because Williams did not request an instruction on the *corpus delicti* rule, he is only entitled to review of that error under *Almanza's* "egregious harm" standard. *See Oursbourn*, 259 S.W.3d at 181-82. *See also 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 being dependent on whether error was preserved for appeal).

Under the egregious harm standard that applies to unpreserved jury charge error, reversible error in the omission of a required jury instruction occurs only when a defendant has been denied "a fair and impartial trial." *Oursbourn,* 259 S.W.3d at 649 (citing *Almanza v State*, 686 S.W.2d 157, 171 (Tex. Crim. App., 1984)). An egregious harm determination must be based on a finding of actual rather than theoretical harm. *Ngo v. State,* 175 S.W.3d 738, 750 (Tex. Crim. App. 2005. For actual harm to be established, the charge error must have affected "the very basis of the case," "deprive[d] the defendant of a valuable right," or "vitally

affect[ed] a defensive theory." *Id*. (citing *Dickey v. State,* 22 S.W.3d 490, 492 (Tex. Crim. App. 1999); *Arline v. State,* 721 S.W.2d 348, 351 (Tex. Crim. App. 1986)).

When assessing harm based on the particular facts of the case, a reviewing court should consider: (1) the charge; (2) "the state of the evidence[,] including contested issues and the weight of the probative evidence"; (3) the parties' arguments; and (4) all other relevant information in the record. *Gelinas v. State*, 398 S.W.3d 703 (Tex. Crim. App. 2013); *Posey v. State,* 966 S.W.2d 57, 60 (Tex. Crim. App. 1998).

The charge in this case, excluding the fact that it failed to contain a jury instruction on the lesser-included offense of murder,[4] was unremarkable. However, the absence of an instruction on the *corpus delicti* rule allowed the jury to consider the evidence deprived of knowledge of a fundamental rule of evidentiary sufficiency. Surely, if an accomplice witness instruction must be given to the jury *sua sponte*, then an instruction on the *corpus delicti* rule is of at least equal gravity.

A jury is presumed to follow the instructions the court gives it. *Hutch v. State,* 922 S.W.2d 166, 172 (Tex. Crim. App. 1996). And the state of the evidence, as Williams demonstrates above, was such that it was insufficient under the *corpus*

[4] This is the subject of Williams' next issue for review.

delicti rule to establish the aggravating element of robbery. Had the jury been properly instructed on the *corpus delicti* rule, this presumption compels the conclusion that the jury would have acquitted Williams.

Indeed, this is particularly true in light of the State's concession at trial that the only evidence that it had to prove the aggravating element of robbery came from Williams' extrajudicial confession – via a jailhouse snitch.

Williams had a right to have a jury determine whether the State had proven beyond a reasonable doubt every element of the crime with which he was charged, including the aggravating element of robbery. *Riley v. State*, 447 S.W.3d 918 (Tex. App. – Texarkana 2014, no pet.)(citing *Demouchette v. State,* 731 S.W.2d 75, 78–79 (Tex. Crim. App. 1986) (in which the Court of Criminal Appeals noted that a jury charge in capital murder case sets out law applicable to case to comply with Art. 36.14 when jury instructed on elements of robbery and attempted robbery)). Here, the failure of the charge to contain a *corpus delicti* instruction allowed the jury to convict him of the offense of capital murder when the State categorically failed to prove the aggravating element of robbery.

Because the jury charge did not properly inform the jury about the State's burden with respect to the aggravating element, and in light of the fact that, as the State conceded at trial, the only evidence of the aggravating element came from an alleged extrajudicial confession via a jailhouse snitch, Williams was deprived of

the opportunity to seek an acquittal from the jury by arguing the *corpus delicti* rule. In short, by withholding from the jury a basic rule of evidentiary sufficiency, the jury was unaware that it should acquit the defendant in absence of proper corroborating evidence.

It is difficult to imagine more egregious harm. Accordingly, this Court should sustain Williams' second issue for review.

APPELLANT'S THIRD ISSUE FOR REVIEW

The day before deliberations began, Williams asked the Court to include an instruction on the lesser-included offense of murder. The State argued this would be improper, and the Court denied Williams' request. However, Williams was entitled to the instruction, and the trial court reversibly erred in denying it.

Charges on Lesser Included Offenses:

A defendant is entitled to a jury charge on a lesser included offense when lesser offense is included within the proof necessary to establish the offense charged and there is evidence that if the defendant is guilty, he is guilty of only the lesser offense. *Dickerson v. State*, 745 S.W.2d 401, 402 (Tex. App. -- Houston [14th Dist.] 1987, no pet.) (quoting *Bell v. State*, 693 S.W.2d 434, 439 (Tex. Crim. App. 1985)).

A trial court errs in denying a request for a lesser-included offense in a jury charge if (1) the offense in question is actually a lesser-included offense of the offense charged in the indictment and (2) there is some evidence in the record from which a rational jury could acquit the defendant of the greater offense while convicting him of the lesser-included offense. *Le v. State*, 479 S.W.3d 462, 472-73 (Tex. App. – Houston [14th Dist.] 2015, no pet.)(citing *Threadgill v. State,* 146 S.W.3d 654, 665 (Tex. Crim. App. 2004); *Delacruz v. State,* 278 S.W.3d 483, 488 (Tex. App. – Houston [14th Dist.] 2009, pet. ref'd)).

In determining whether the second condition is satisfied, a reviewing court should review all of the evidence presented at trial without considering its credibility or whether it conflicts with other evidence. *Le*, 479 S.W.3d at 473. *Moore v. State,* 969 S.W.2d 4, 8 (Tex.Crim.App.1998); *Delacruz,* 278 S.W.3d at 488. Anything more than a scintilla of evidence may be sufficient to entitle a defendant to an instruction on the lesser-included offense, regardless of whether the evidence is weak, impeached, or contradicted. *See Cavazos v. State,* 382 S.W.3d 377, 383 (Tex. Crim. App. 2012); *Hall v. State,* 225 S.W.3d 524, 536 (Tex. Crim. App. 2007).

Although this threshold showing is low, it is not enough that the jury might merely disbelieve evidence regarding the greater offense; instead, there must be some evidence directly germane to the lesser offense for the finder of fact to

consider before an instruction on a lesser-included offense is warranted. *Sweed v. State,* 351 S.W.3d 63, 68 (Tex. Crim. App. 2011). If the defendant either presents evidence that he committed no offense or presents no evidence, and there is no evidence otherwise showing he is guilty only of the lesser-included offense, then a charge on a lesser-included offense is not required. *Bignall v. State,* 887 S.W.2d 21, 24 (Tex. Crim. App. 1994).

Here, the situation is unusual because the State presented legally insufficient evidence to sustain the capital murder conviction because it did not satisfy the *corpus delicti* rule. On the other hand, the State did present evidence that would have allowed a rational jury to convict Williams of murder. In other words, a properly instructed jury could *only* have found Williams guilty of murder, and the jury should have been given that option upon Williams' request.

This Charge Error Caused Williams "Some Harm":

The Court erred when it denied Williams' request for an instruction on the lesser-included offense of murder. Here, the charge error was preserved, and a reviewing court should reverse a trial court on the basis of preserved jury charge error if the error is calculated to injure the rights of the defendant, "which means no more than that there must be *some* harm." *Green v. State*, 476 S.W.3d 440, 446 (Tex. Crim. App. 2015)(citing *Almanza,* 686 S.W.2d at 170).

Here, in light of the lack of evidence supporting Williams' capital murder conviction and corresponding absence of an instruction on the *corpus delicti* rule, the absence of an instruction on the lesser included offense prevented the jury from considering the possibility of that he was only guilty of the offense of murder. This would satisfy the definition of egregious harm, and certainly resulted in "some harm" to Williams. Accordingly, this Court should sustain Williams' third issue for review.

APPELLANT'S FOURTH ISSUE FOR REVIEW

The remaining question is how to dispose of the case. This Court should clearly reverse the trial court's judgment because the evidence is insufficient under the *corpus delicti* rule and Williams was subjected to two harmful jury charge errors.

Williams would argue that he should be acquitted because the jury was not authorized to convict him of the lesser-included offense of murder and the evidence is insufficient to sustain the conviction for the greater inclusive offense. However, the Court of Criminal Appeals seems to have precluded this resolution when it decided *Thornton v. State*, 425 S.W.3d 289 (Tex. Crim. App. 2014) and *Bowen v. State*, 374 S.W.3d 427 (Tex. Crim. App. 2012). Interpreting *Bowen* in *Thornton*, the Court of Criminal Appeals, after considering its "jurisprudence

regarding the availability of judgment reformation after a finding of insufficient evidence," held:

> In summary, then, after a court of appeals has found the evidence insufficient to support an appellant's conviction for a greater-inclusive offense, in deciding whether to reform the judgment to reflect a conviction for a lesser-included offense, that court must answer two questions: 1) in the course of convicting the appellant of the greater offense, must the jury have necessarily found every element necessary to convict the appellant for the lesser-included offense; and 2) conducting an evidentiary sufficiency analysis as though the appellant had been convicted of the lesser-included offense at trial, is there sufficient evidence to support a conviction for that offense? If the answer to either of these questions is no, the court of appeals is not authorized to reform the judgment. But if the answers to both are yes, the court is authorized indeed required to avoid the "unjust" result of an outright acquittal by reforming the judgment to reflect a conviction for the lesser-included offense.
>
> *Thornton*, 425 S.W.3d at 300.

Here, although there was insufficient evidence on the aggravating element of robbery, the State had ample evidence corroborating the lesser-included offense of murder. Since the answers to both of the relevant questions outlined in *Thornton* do not appear to be "no," this Court would appear to otherwise be authorized to reform the trial court's judgment to show a conviction for the lesser included offense of murder.

This is not the appropriate result for two reasons. First, Williams would argue that the Court of Criminal appeals opinion in Thornton did not adequately provide for the situation presented here, where the State literally both conceded

evidentiary insufficiency under the *corpus delicti* rule and, at the same time, successfully persuaded the trial court to refuse to submit a jury charge on the lesser included offense of murder. Such a position should not be countenanced. However, this seems to be an argument more properly directed to the Court of Criminal Appeals, and Williams makes it here to insure the argument is preserved.

The second reason this Court should not reform the trial court's judgment to reflect a conviction for the lesser-included offense of murder was not precluded by the Court of Criminal appeals treatment of evidentiary sufficiency in *Thornton* and *Bowen*. Here, in addition to evidentiary insufficiency, Williams suffered two egregiously harmful charge errors in the guilt innocence phase of the trial. As a result, if this Court cannot require the trial court to enter a judgment of acquittal, it must at least reverse the conviction in its entirety and remand the case for a new trial, where a jury can properly consider the factual issue of whether the State satisfied its burden under the *corpus delicti* rule.

CONCLUSION AND PRAYER

Williams believes that this Court should reverse judgment of the trial court and remand the case with instructions that it enters a judgment of acquittal. However, Williams acknowledges that this result appears to be precluded under the Court of Criminal Appeals holdings in *Thornton* and *Bowen*. If this result is indeed precluded by that authority, then, in light of the egregious harm he suffered from the two jury charge errors present in this case, this Court should reverse the judgment of the Court of Appeals and remand it with orders to conduct a new trial.

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CERTIFICATE OF SERVICE

The Appellant has served copy of the foregoing instrument on the State's attorney via the E-file system. The State's attorney maintains the following physical address:

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_____

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CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this computer-generated document has a word count of 8583 words, based upon the representation provided by the word processing program that was used to create the document.

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