NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHIRON SHARROL FRANCIS,
Petitioner

vs.

THE STATE OF TEXAS,
Respondent

On Petition For Writ of Certiorari to the Fourteenth Court of Appeals at Houston, Texas

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PETITION FOR WRIT OF CERTIORARI

Leonard Thomas Bradt
Texas Bar No. 02841600
14090 Southwest Freeway, Suite 300
Sugar Land, Texas 77478
(281) 201-0700
Fax: (281) 1202
ltbradt@flash.net
Counsel of record for Joshua Jermaine Nelson

Tracy Dee Cluck
Texas Bar No. 00787254
12600 Hill County Boulevard, Suite R-275
Austin, Texas 78738
(512) 329-2615
Fax: (512) 329-2604
tracy@tracyclucklawyer.com
Of Counsel

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Leonard Thomas Bradt
Texas Bar No. 02841600
14090 Southwest Freeway, Suite 300
Sugar Land, Texas 77478
(281) 201-0700
Fax: (281) 1202
ltbradt@flash.net
Counsel of record for Chiron Sharrol Francis

Tracy Dee Cluck
Texas Bar No. 00787254
12600 Hill County Boulevard, Suite R-275
Austin, Texas 78738
(512) 329-2615
Fax: (512) 329-2604
tracy@tracyclucklawyer.com
Of Counsel

QUESTIONS PRESENTED

1. The police violate State criminal law, Federal and State regulations, and their own procedures and policies in disposing of and failing to preserve evidence. Does this conduct show bad faith on the part of the police; and, under these circumstances, is the defendant denied Due Process of law and a fair trial? (Implicating *Arizona v. Youngblood*, 488 U.S. 51 (1988))

2. When the State produces evidence to the defense but objects to its use during trial because there is no one who can authenticate it, are a defendant's rights under the confrontation clause of the Sixth Amendment, substantive Due Process rights and a defendant's right to present a complete defense violated? (Implicating *Chambers v. Mississippi*, 410 U.S. 284, 294 (1972) and *Crane v. Kentucky*, 476 U.S. 683, 690 (1986))

3. Investigating officers place a KC ballcap and an LSU ballcap in the Evidence Room, as evidence found at the crime scene. The KC ballcap is seen in the crime scene photographs atop the dead driver's head. The LSU ballcap is not visible in the crime scene photographs but is documented by the investigating officers as having been atop the driver's head, under the KC ballcap. The KC ballcap has one bullet hole in it, whereas the LSU ballcap has two bullet holes in it—neither of which lines up with the hole in the KC ballcap. These two ballcaps were crucial to showing how badly the crime scene and evidence were handled by the police. But the defendant was denied the use of the LSU ballcap during trial because there were no photographs showing it at the scene of the crime. Did the exclusion of the LSU ballcap deny the defendant his rights under the confrontation clause of the Sixth Amendment, a defendant's right to a fair trial under the Fourteenth Amendment and a defendant's right to present a complete defense? (Implicating *Chambers v. Mississippi*, 410 U.S. 284, 294 (1972) and *Crane v. Kentucky*, 476 U.S. 683, 690 (1986))

PARTIES TO THE PROCEEDING

Chiron Sharrol Francis – Petitioner

State of Texas – Respondent

RULE 29.6 STATEMENT

Petitioner is not a corporate entity.

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Petitioner, Chiron Sharrol Francis, respectfully petitions for a writ of certiorari to review the judgment of the Fourteenth Court of Appeals at Houston, Texas.

OPINIONS BELOW

The Texas Court of Criminal Appeals refused a Petition for Discretionary Review without written opinion. The notice of that refusal is Appendix 1. Petitioner did not move for rehearing of that refusal. The judgment and opinion of the Fourteenth Court of Appeals at Houston, Texas in Docket No. 14-17-00958-CR, affirming Petitioner's conviction, is unpublished and is Appendix 2. The Motion for Rehearing was denied by Order, Appendix 3. The Motion for Rehearing en Banc was denied by Order, Appendix 4. The trial court's Judgment of conviction is Appendix 5.

STATEMENT OF JURISDICTION

The Texas Court of Criminal Appeals' refusal of the petition for discretionary review of the opinion of the Fourteenth Court of Appeals was issued on July 22, 2020. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a). Appendix 1. This petition is timely filed.

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. U.S. Const. Amend. VI

The Fourteenth Amendment to the United States Constitution provides, in relevant part, as follows:

> ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amend. XIV

RELEVANT STATUTORY PROVISIONS

Texas Penal Code § 37.09 (2011), provides in relevant part, as follows:

> (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:
> (1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or
> (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.
> ....
> (d) A person commits an offense if the person:
> (1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense; ....

Texas Penal Code § 37.10 (2011), provides in relevant part, as follows:

> (a) A person commits an offense if he:
> (1) knowingly makes a false entry in, or false alteration of, a governmental record....[1]

30 TAC § 326.3 (23), provides in relevant part, as follows:

> Medical waste--Treated and untreated special waste from health

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[1] Governmental record means anything belonging to, received by, or kept by government for information, including a court record. Texas Penal Code § 37.01 (2)(A) (2011).

> care-related facilities that is comprised of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions) from the sources specified in 25 TAC §1.134 (relating to Application), as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5), except that the term does not include medical waste produced on a farm or ranch as defined in 34 TAC §3.296(f) (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants. ....
>
> 30 TAC § 330.3(148)(c), provides in relevant part, as follows:
>
> Special waste--Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are: ...
> (C) untreated medical waste ....

STATEMENT OF THE CASE

Introduction

This case presents several inter-related and very important questions for review. First, in *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988), this Court held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." Here, the police violated State criminal law, Federal and State regulations, and their own procedures in disposing of and failing to preserve substantial amounts of evidence. Is that conduct bad faith, such that the defendant is denied due process of law and a fair trial? Petitioner raised this question in the First Issue of his Brief at the Fourteenth

Court of Appeals, which denied relief on this ground, holding that bad faith was not shown—while ignoring many of the pieces of evidence that disappeared.

Second, when the State produces evidence to the defense but objects to its use during trial because there is no one who can authenticate it, are a defendant's rights under the confrontation clause of the Sixth Amendment and substantive Due Process rights violated? And in that situation, is a defendant's right to present a complete defense violated per *Chambers v. Mississippi*, 410 U.S. 284, 294 (1972) and *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)? Petitioner raised this in his Fifth and Seventh Issues in his Brief at the Fourteenth Court of Appeals, which denied relief on these grounds.

Third, in the Current Information Report, it states the "KC ballcap was found atop the LSU ballcap, both on Schwartz's head."[2] The investigating officers placed a KC ballcap and an LSU ballcap in the Evidence Room, as evidence taken from the crime scene. The KC ballcap is seen in the crime scene photographs atop the dead driver's head. The LSU ballcap is not visible in the crime scene photographs but is documented by the investigating officers as having been atop the driver's head, under the KC ballcap. The KC ballcap has one bullet hole in it, whereas the LSU ballcap has two bullet holes in it—neither of which lines up with the hole in the KC ballcap. The LSU ballcap tested negative for the presence of human blood and DNA. These two ballcaps were crucial to showing how badly the crime scene and evidence were handled

[2] CR.1, p. 212.

by the police. But the defendant was denied the use of the LSU ballcap during trial because there were no photographs showing it at the scene of the crime. Did the exclusion of the LSU ballcap deny the defendant his rights under the confrontation clause of the Sixth Amendment, a defendant's right to a fair trial under the Fourteenth Amendment and a defendant's right to present a complete defense? (Implicating *Chambers v. Mississippi*, 410 U.S. 284, 294 (1972) and *Crane v. Kentucky*, 476 U.S. 683, 690 (1986))

BACKGROUND FACTS AND PROCEDURAL HISTORY

In April, 1994, two young White drug dealers were murdered in Houston, during an attempt to purchase 60 lbs. of Mexican marijuana. They were shot inside a Mazda automobile, which was filled with many different items—none of which were dusted for fingerprints or tested for DNA. Photos taken at the scene show the car as having brain matter and copious amounts of blood everywhere, literally streaming out onto the street.

The crime was investigated by the Houston Police Department. Most of the items shown in the few crime scene and evidence-stall photos were not kept, or even recorded as having been in the car. A week after the murders, and without the blood and brain matter having been remediated, the car was released to a stranger to the title—on God knows what paperwork—in violation of HPD procedures. And what happened to many of the pieces of evidence in the car is unknown.

No attempt to talk to or interview Petitioner was made. In August, 1994, an arrest warrant was issued for Petitioner but not served on him.

In July, 2014, Petitioner was charged with the homicides by information.

In November, 2014, an application was submitted to the Bolivarian Republic of Venezuela to get Petitioner extradited. In June, 2015, Petitioner was indicted for the murders; and he was extradited from Venezuela.

In November, 2017, Petitioner was tried and a jury convicted. A timely appeal was taken to the 14TH Court of Appeals in Houston, which affirmed the convictions in a Memorandum Opinion. (Appendix 2) Timely motions for rehearing and for rehearing en banc were filed and denied without written opinion. (Appendix 3 and 4) On July 22, 2020, without written opinion, the Texas Court of Criminal Appeals denied discretionary review. (Appendix 1) This timely Petition results.

STANDARD OF REVIEW

Because this petition involves the interpretation of federal constitutional law and prior holdings of this Court, the standard of review is de novo.[3]

REASONS FOR GRANTING THE WRIT

The police violate State criminal law, Federal and State regulations, and their own procedures and policies in disposing of and failing to preserve evidence. Under these circumstances, the Petitioner should be held to have been denied Due Process of law and a fair trial.

BACKGROUND FACTS:

During a drug deal gone bad, the decedents were shot inside a two-door Mazda RX-9. The Current Information Report states: "Based on the evidence at the scene, it

[3] *See Salve Regina College v. Russell*, 499 U.S. 225, 231-232 (1991).

would appear that the suspect was seated inside the Mazda in the rear seat when shooting the complainants."[4]

The interior of the car was awash in blood, with blood streaming from the car onto the street. The photographs taken[5] show, *inter alia*, the backseat of the Mazda with a shell casing[6] and a red-and-white umbrella;[7] the interior of the Mazda, showing blood stains and a Pink Floyd seat cushion;[8] driver's car door and steering column with bullet holes;[9] passenger side of car with a black case under the seat;[10] backseat of the car with a Cypress Hill ballcap, a red CaseLogic case, an umbrella and a shell casing;[11] trunk of car with a Marlboro bag, UT backpack, black backpack and white laundry basket;[12] headliner of car with blood or other stains;[13] car jack compartment showing

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[4] RR-33, pp.26-235.

[5] Some were taken at the location of the shootings; others in the HPD Evidence Stall; some in a motel room and some when a decedent's safe deposit box was opened.

[6] RR-29,p.5.

[7] RR-29,p.6.

[8] RR-29,p.7-8.

[9] RR-29,p.10.

[10] RR-29,p.15.

[11] RR-29,p.19.

[12] RR-29,p.20.

[13] RR-29,p.22.

a bottle;[14] and a Harley Davidson wallet.[15] The photos show more bullet casings than were placed into the Evidence Room.

Most of these items in or near the car, are not documented in any of the police records, much less kept. None were fingerprinted. None were tested for DNA—even though the Cypress Hill ballcap, the CaseLogic case and the car seats would have had touch DNA to show who was wearing it or was sitting in the back seat. Fingerprints were not taken from any surface in the car or from the car doors. There was no attempt to determine the actual trajectories of the bullets fired in or into the car.[16] There was not even a testing for gunshot residue in the car—which would have shown whether a gun was fired in the car.

On pages 2.013-2.014 of the Current Information Report (Offense Report), it states: "The #2 complainant (driver) was clad in a pair of acid wash jeans, a white and green colored pullover shirt, red and blue "KC" ballcap which was **atop a purple and gold "LSU" ballcap, both atop his head**."(emphasis added) The KC ballcap is clearly seen in the photos taken at the scene but the LSU ballcap is not. According to the Current Information Report, the KC and LSU ballcaps were collected on April 11,

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[14] RR-29,p.26.

[15] RR-29,p.73.

[16] In 1994, this would have been done by inserting wooden rods into the bullet holes and then photographing those rods. Without this information, it is impossible to definitively know where the gunshots came from.

1994 but not placed in the drying room until May 5, 1994.[17] After drying, both were placed into the Property Room.

One week after the shootings—in violation of their policies and procedures—HPD released the Mazda RX-9 to a stranger to the title, on God-knows what paperwork, without any record to show that the blood and brain matter had been remediated.

The LSU ballcap has 2 bullet holes in it, neither of which lines up with the one bullet hole in the KC ballcap or with the bullet holes in the driver's head. And, when tested, the blood on the LSU ballcap was not found to be human blood not was human DNA found on it.[18]

With respect to the LSU ballcap, the State's explanation for the absence of human blood (per the Hematrace test), and the absence of human DNA, was degradation due to the time and conditions in storage. But the KC ballcap, which was stored for the same length of time and in the same conditions, was shown to have human DNA on it but not human blood.

DENIAL OF DUE PROCESS:

The loss or destruction of exculpatory evidence can deny a criminal defendant due process of law under the Fourteenth Amendment.[19] Therefore, the State has a duty

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[17] RR-7, p. 22.

[18] RR-7, p. 79; Defendant's Exhibit 89.

[19] U.S. Const. amend. XIV.

to preserve exculpatory evidence.[20] However, this duty is limited to evidence that (1) possesses an exculpatory value that was apparent before the evidence was destroyed and (2) is of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.[21]

As noted in the Current Information Report, it was the investigating officer's opinion that the shooter was in the back seat of the car and that the first shots came from there.[22] As the Cypress Hill ballcap, the red-and-white umbrella and CaseLogic CD case were in the back of the car, they would have had touch DNA that could exonerate Petitioner by showing who else was in the back seat. The seats of the Mazda would also have had touch DNA on them, to show who was in the back seat of the car. The car door would have fingerprints to show who got out. This exculpatory value was known to the investigating officers.

As noted by this Court, "whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense."[23] Petitioner would argue that, at the very least, the Mazda, Cypress Hill ballcap, the red-and-white umbrella and CaseLogic case were such evidence.

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[20] *California v. Trombetta*, 467 U.S. 479, 488–89 (1984).

[21] *Trombetta*, 467 U.S. at 488–89.

[22] RR.17, pp.37-38.

[23] *Trombetta*, 467 U.S. at 488.

Assuming, without conceding, that those items were not that type of evidence, then – as to the evidence not preserved – it must be shown that the officers were acting "in good faith and in accord with their normal practice"[24] for it not to be bad faith to have failed to preserve them. Or that the same information was available from other sources.[25] Obviously, none of the disposed of evidence was available from other sources.

More importantly, there is no evidence[26] that the HPD officers were acting in accord with their normal practice, or in good faith, when they took only 82 photos;[27] when they drove a police car through the taped-off crime scene; when they failed to inventory, much less keep, many pieces of evidence or their contents;[28] when they failed to photograph relevant pieces of evidence;[29] when they photographed totally irrelevant

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[24] *Killian v. United States*, 368 U.S. 231, 242 (1961).

[25] *Id.*

[26] Entire CR and RR.

[27] Defendant's #1–#82. Three were of a motel room where the decedents had been earlier in the day; fifteen were of the inside of the car and five were of the exterior of the car – taken in the Evidence Stall; one was of the contents of the center arm rest; two were jars of marijuana taken from the trunk; twenty-three were of the contents of the driver's safe deposit box; thirty-one were taken at the scene of crime; and four were at autopsy.

[28] Examples of these are a red-and-white umbrella, a CaseLogic CD case, a black case and the Cypress Hill ballcap seen in photos of the car interior.

[29] This would include what appears to be a Houston Police Officers Association decal on the front windshield.

evidence;[30] when they planted the LSU ballcap;[31] when they disposed of the crime scene (Mazda) on God-knows what paperwork, to a stranger to the title,[32] without having remediated the biohazards contained within the car and in violation of the policies and procedures; when they then failed to preserve that paperwork; etc.. There was no testimony that the HPD officers acted in good faith, or in accord with their normal practices in investigating these crimes. This precludes this Court from drawing any conclusion that proper procedure was, in fact, followed. But the 14TH Court of Appeals ignored this in holding that Petitioner had not shown bad faith.

Not only was there no evidence that proper procedure was actually followed, there was evidence that shows that proper procedure was not followed in the collection of, documentation of and preservation of evidence.

Further, the HPD officers "investigating" the homicides went out of their way to tamper with the evidence and prevent its availability for Petitioner's use in defending the allegations against him. Again, the 14TH Court of Appeals ignored this in ruling against Petitioner.

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[30] Such as a BIC lighter found in the grass, 20+ feet from the car – a lighter that was never fingerprinted.

[31] Petitioner says planted because it is not seen in any of the crime scene photos, its two bullet holes do not line up with the one bullet hole in the KC ballcap that is clearly seen and, when tested, it came back negative for the presence of human blood. If it was, in fact, found at the crime scene as described in the Current Information Report, then, as Desi used to say, "Lucy, you've got some 'splaining to do."

[32] Procedure was that a car was to be released **only** to the owner of record (in this case the dead driver) or on a power of attorney executed by the owner of record.

BAD FAITH:

It will never be known whether the missing evidence would exonerate Petitioner, therefore the duty to preserve cannot be established. If the duty to preserve is not established, one must then turn to the standard articulated by this Court in *Arizona v. Youngblood*, 488 U.S. 51 (1988). In *Youngblood*, this Court held that a defendant must show bad faith on the part of the police in order for a court to find that the destruction of potentially useful evidence is a denial of due process. *Id.* at 58. Following *Brady*, the Court reasoned that if the destroyed evidence is material and exculpatory, then whether the evidence was destroyed in good or bad faith is irrelevant.[33] But, if the destroyed evidence is merely "potentially useful," the accused must show that the State acted in bad faith when it failed to preserve the evidence in order to show a violation of due process of law.[34] Unfortunately, this Court has never defined or delimited what constitutes that "bad faith."

The "missing" evidence was definitely material and potentially useful in that it could show who else was in the car, who shot from where, etc..

Because it was potentially useful and the State failed to preserve it, the question becomes—did the HPD act in bad faith in not preserving and disposing of the evidence? Separate and apart from the failure to follow proper procedure, how much more bad faith need an accused show than violations of several felony Penal Code sections

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[33] *Id.* at 57 (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)).

[34] *Id.* at 58.

relating to tampering with evidence or making false entries in governmental records? Not to mention the outright fabrication of evidence.

Stated another way, when the government's destruction of evidence constitutes a criminal act, as here, it should be bad faith, *per se*.[35] And this Court should so hold.

Regrettably, the 14TH Court of Appeals found no crimes were committed, attributing the mention of the LSU ballcap to inconsistencies, etc.. This should not be brushed aside so easily.

STATUTES AT ISSUE:

Texas Penal Code § 37.09(a)(1), provides, in relevant part, that a person commits an offense if a person, knowing that an offense has been committed, destroys, or conceals any thing with intent to impair its availability as evidence in any subsequent investigation of or official proceeding related to the offense. Texas Penal Code § 37.09(a)(2), provides in relevant part, a person commits an offense if he makes, presents, or uses any record or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

Texas Penal Code § 37.10, provides in relevant part, that a person commits an offense if he knowingly makes a false entry in a governmental record.

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[35] In many ways, this *per se* bad faith is analogous to negligence *per se*. To establish a negligence per se cause of action, a plaintiff must prove: (1) the defendant's act or omission is in violation of a statute or ordinance; (2) the injured person was within the class of persons which the ordinance was designed to protect; and (3) the defendant's act or omission proximately caused the injury. *See Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 549 (Tex.1985). Here the HPD's actions were in violation of the Penal Code, Chiron is within the class of persons which the statute is designed to protect and the HPD's actions caused the loss of the evidence.

HOLDINGS BELOW:

In denying relief, the 14TH Court of Appeals did not address the many, many pieces of evidence that disappeared without even being listed in the Current Information Report, e.g.: the Cypress Hill ballcap, the CaseLogic case, the red-and-white umbrella, the UT backpack, the black case, the extra shell casing, etc., much less kept by the HPD. It also did not address whether the failure to keep those pieces of evidence was done in bad faith, as required by *Arizona v. Youngblood*, *supra.*

The Court completely ignored the non-human blood on both ballcaps which could have been the result of animal (chicken?) blood being thrown on the driver as part of a curse from the Mexican drug purveyors.[36]

With respect to the LSU ballcap, the 14TH Court of Appeals held: "There is an inconsistency between the report and the evidence adduced but there is no evidence officers planted the LSU cap in the car. The fact that the LSU cap had two bullet holes that did not align with the single bullet hole in the KC cap is evidence the CIR report is incorrect."[37] And in footnote 8, it held: "The State's case was not based upon the LSU

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[36] Santeria is one such form of witchcraft / curse associated with the Mexican drug trade. See, e.g., https://tulsaworld.com/archive/the-demons-curse-cult-style-slayings-no-different-than-drug-murders-in-our-streets/article_b1f57b1c-3eca-5c8e-84c3-738df19b6032.html (Last accessed December 11, 2020)

[37] This "incorrectness" should not be treated so lightly. Seven different officers were at the crime scene. CSU Officer Burke made the entries about the LSU ballcap in the Current Information Report; his entries were reviewed by a supervisor (EG, employee #025810); Officer Kennedy removed the LSU ballcap from the Drying Room and placed it in the Property Room.

cap or any forensic evidence derived therefrom."

But the 14TH Court of Appeals did not properly analyze the significance of the LSU ballcap which is, either it was or it was not found atop the driver's head, under the KC ballcap. If the LSU ballcap really was found atop the driver's head, under the KC ballcap, then the "magic bullet" that killed Kennedy and wounded Connally apparently resurfaced 30+ years later, accompanied by non-human blood. And as part of Petitioner's right to present a defense and to a fair trial, he should have been allowed to introduce the LSU ballcap and ask the State to explain the re-appearance of the "magic bullet" together with the non-human blood and lack of human DNA.

But if the LSU ballcap was not actually found at the crime scene, as reflected in the Current Information Report, then the officers planted the ballcap and violated Texas Penal Code § 37.09(a)(2)[38] and § 37.10.[39] They would have thereby committed crimes when they made the Current Information Report show that the LSU ballcap was found at the crime scene atop the driver's head, under the KC ballcap.

Further, in that situation, when the officers logged the LSU ballcap into the Property Room, they again violated Texas Penal Code § 37.09(a)(2) – another third degree felony. And, an essential element of Petitioner's right to a fair trial was that he should have been allowed to show the jury that the police committed crimes during

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[38] A person commits an offense if the person makes any record or document, with knowledge of its falsity. This is a felony of the third degree.

[39] A person commits an offense if he knowingly makes a false entry in a governmental record. This is a Class A misdemeanor.

their investigation of the murders, beginning with planting the LSU ballcap and recording its "presence" in the Current Information Report.

The 14TH Court's holdings regarding the car are even worse. The 14TH Court concluded "evidence from inside the car would not have exculpated him. The release of the car does not establish officers destroyed evidence with intent to impair its availability as evidence in the investigation. Accordingly, the record does not reflect an offense was committed." In footnote 9, it held: "Furthermore, the State's case was not based upon any forensic evidence taken from the car."

But forensic evidence is evidence used in court.[40] And the driver's body, which was in the car, was used in the State's case. In that regard, footnote 9 is mistaken.

With all of this, the unanswered question is, why would the police release the car in violation of their procedures and policies – without remediating any of the medical waste (blood and brain matter) in the car – if it was not to impair its availability as evidence in the investigation? For an offense to have been committed, all that was required was that the officer(s) have destroyed, or concealed the car with intent to impair its availability as evidence in the investigation or official proceeding.[41] Allowing the car to be released to a stranger to the title, without the proper paperwork, in violation of HPD's procedures and policy, caused it to disappear, effectively destroying the car, shows that intent. That is a *prima facie* violation of the statute.

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[40] Source: Black's Law Dictionary (11TH ed. 2019).

[41] Texas Penal Code § 37.09(a)(1).

The 14TH Court of Appeals erred when it held otherwise.

Regardless of whether releasing the car was a criminal offense, the 14TH Court of Appeals erred when it upheld the trial court's holding that Petitioner had presented only supposition and speculation as to whether the police acted in bad faith in disposing of the car. Simply put, rules are meant to be followed. So are official policies and procedures. And when they aren't, someone needs to explain why.

IMPORTANCE OF CASE:

This Court has never delimited what constitutes bad faith when the police fail to preserve and dispose of potentially useful evidence. The facts of this case show that this Court's guidance in that area is sorely needed.

> **When the State produces evidence to the defense but objects to its use during trial because there is no one who can authenticate it, a defendant's rights under the confrontation clause of the Sixth Amendment and a defendant's right to present a complete defense are violated.**

Time and again, the State objected to the introduction into evidence of items that it had produced pursuant to *Brady* or Art. 39.14, TEX. CODE CRIM. PRO.,[42] because there was no one to authenticate or sponsor or prove up the evidence. Time and again, the court sustained the objections.[43]

Requiring the State to prove up the chain of custody before evidence is introduced is a right that belongs to the defendant—not the State. Yet a challenge to

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[42] *See, e.g.,* RR-19,p.23-25;RR-18,pp.103-105.

[43] *Id.*

chain of custody ordinarily goes to the weight rather than the admissibility of the evidence. E.g., *United States v. Turner*, 591 F.3d 928, 934–35 (7th Cir.2010); *United States v. Lee*, 502 F.3d 691, 697–98 (7th Cir.2007).

When physical evidence does not have unique characteristics, a chain of custody may be required to prove that the item presented in trial is the same one involved in the events at issue.[44] The chain of custody is conclusively established if an officer testifies that the item was seized, tagged, marked, placed in storage, and retrieved for trial.[45]

Further, Rule 901(a), TEX. R. EVID., provides that to "satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." The crime scene photos and the Current Information Report should be such sufficient evidence.

And relevant evidence is admissible, except as otherwise provided by the United States or Texas Constitution, a statute, the Texas Rules of Evidence, or other rules prescribed under statutory authority.[46] Generally, if a fact offered in evidence is not violative of any established principle that renders it incompetent and has any

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[44] *Jackson v. State*, 968 S.W.2d 495, 500 (Tex.App.–Texarkana 1998, pet. ref'd).

[45] *Lagrone v. State*, 942 S.W.2d 602, 617 (Tex.Crim.App.1997).

[46] Tex. R. Evid. 402.

reasonable tendency to raise a material inference in the case, it must be admitted.[47] Generally, all relevant evidence is admissible, and a trial court errs in excluding relevant evidence unless some rule or principle requires its exclusion.[48] Furthermore, the rule or principle under which the court excludes relevant evidence must be supported by good cause and solid policy reasons.[49]

CONCLUSION:

The trial court denied Petitioner the use of evidence that the State collected and produced pursuant to *Brady* or Art. 39.14, TEX. CODE CRIM. PRO.. This denied Petitioner a fair trial and his right to present a defense in violation of his Sixth Amendment and Fourteenth Amendment rights. And it denied Petitioner substantive Due Process when he was prohibited from using evidence produced by the State, pursuant to *Brady* – because there was no one who could sponsor or authenticate that evidence or because the evidence was not seen in any photos from the crime scene.

IMPORTANCE OF CASE:

The number of cold cases that are being brought to trial is increasing on an almost daily basis. Those defendants should not be denied the use of evidence

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[47] *Kansas City, M. & O. Ry. Co. v. Young*, 50 Tex. Civ. App. 610, 111 S.W. 764, 765 (1908); *National State Bank of Mt. Pleasant, Iowa, v. Ricketts*, 152 S.W. 646 (Tex. Civ. App. Amarillo 1912) (stating that evidence is admissible when it meets the legal requirements as to competency, materiality, and relevancy).

[48] *Stokes v. Puckett*, 972 S.W.2d 921, 926 (Tex. App.–Beaumont 1998).

[49] *Farr v. Wright*, 833 S.W.2d 597, 599 (Tex. App. – Corpus Christi 1992, writ denied).

produced by the State merely because there is no one who can sponsor same. Such a requirement denies them a fair trial and the right to present a defense.

> **Officers document a LSU ballcap (with two bullet holes in it) as having been found atop the decedent's head and under a KC ballcap (with only one hole in it), and log both into the Property Room. Does it deny the defendant a fair trial and the right to present a defense when he is denied the right to show the jury the LSU ballcap because there is no photograph showing the LSU ballcap at the crime scene? Stated another way, did the exclusion of the LSU ballcap deny the defendant his rights under the confrontation clause of the Sixth Amendment and a defendant's right to a fair trial under the Fourteenth Amendment? (Implicating *Chambers v. Mississippi*, 410 U.S. 284, 294 (1972) and *Crane v. Kentucky*, 476 U.S. 683, 690 (1986))**

Both times Petitioner attempted to use the LSU ballcap as evidence, the State objected on the ground that the LSU ballcap was not seen in any of the crime scene photos. Those objections were sustained and Petitioner was not allowed to show it to the jury, or to cross-examine any witness with it.

According to the Current Information Report, two ballcaps were collected on April 11, 1994.[50] One was an LSU ballcap and one was a KC ballcap.[51] The KC and LSU ballcaps were both referred to in the Current Information Report.

In connection with the Motion to Suppress, HPD Sgt. John Parker was asked by the State to bring, and he brought two caps, fired shell casings and bullets from the

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[50] RR-7,p.22.

[51] RR-7,p.26.

HPD Property Room.[52] The KC ballcap is Defendant's #77;[53] and the LSU ballcap is Defendant's #78[54] from the Motion to Suppress. The ballcaps remained with the Official Court reporter from the Motion to Suppress through trial. The KC ballcap is Defendant's # 86 and 87 from the trial.

Again, in the Current Information Report, it states the "KC ballcap was found atop the LSU ballcap, both **on** Schwartz's head."[55] The investigating officers placed a KC ballcap and an LSU ballcap in the Evidence Room, as evidence taken from the crime scene. The KC ballcap is seen in the crime scene photographs atop the dead driver's head. The LSU ballcap is not visible in the crime scene photographs but is documented by the investigating officers as having been atop the driver's head, under the KC ballcap. The KC ballcap has one bullet hole in it, whereas the LSU ballcap has two bullet holes in it—neither of which lines up with the hole in the KC ballcap. The LSU ballcap tested negative for the presence of human blood and DNA. These **two** ballcaps were crucial to showing how badly the crime scene, evidence and investigation were handled by the police.

In addition to being listed in the Current Information Report, and in connection with Petitioner's Motion to Suppress, the State asked HPD Sgt. John Parker to bring

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[52] RR-7,p.19.

[53] RR-7,p.27.

[54] RR-7,p.28.

[55] CR.1, p. 212. Emphasis added.

the two caps, fired shell casings and bullets from the HPD Property Room,[56] which he did. That should be held to authenticate the caps or to satisfy the chain of custody, assuming *arguendo*, that Petitioner was required to establish same before the caps could be introduced. If it doesn't, then the fact that all of the items of evidence that were excluded are described in the Current Information Report should be held to satisfy that requirement. This Court should address this.

Whether the LSU ballcap was, or was not seen in the crime scene photos is not determinative of whether Petitioner had a right to introduce it into evidence to confront and cross-examine the State's witnesses on how badly the HPD had (mis)handled the investigation into the murders.

This Court has repeatedly expressed its belief that "the right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal."[57]

This Court held that, "Cross-examination of a witness is a matter of right."[58] This Court went on to hold, "The extent of cross-examination with respect to an appropriate subject of inquiry is within the sound discretion of the trial court. It may exercise a reasonable judgment in determining when the subject is exhausted. (citations omitted) But no obligation is imposed on the court, such as that suggested

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[56] RR-7,p.19.

[57] *Barber v. Page*, 390 U.S. 719, 721 (1968); citing *Pointer v. State of Texas*, 380 U.S. 400, 405 (1965).

[58] *Alford v. United States*, 282 U.S. 687, 691 (1931).

below, to protect a witness from being discredited on cross-examination, short of an attempted invasion of his constitutional protection from self incrimination, properly invoked. There is a duty to protect him from questions which go beyond the bonds of proper cross-examination merely to harass, annoy or humiliate him."[59]

A basic element of Petitioner's right to confrontation and his right to a fair trial, was to introduce the LSU ballcap, with its 2 bullet holes and non-human blood and no human DNA, and to then confront and cross-examine all of the State's witnesses with the LSU ballcap, its 2 bullet holes and non-human blood, lacking human DNA.

This is especially important in light of the State's witness in the Motion to Suppress (Juli Rehfuss) who "explained" that the Hematrace test was unable to confirm human blood on the KC and LSU ballcaps because of degradation of the ballcap while stored.[60] By DNA testing, they were able to confirm a single human male source on the KC ballcap but they were unable to confirm same on the LSU ballcap.[61] Ms. Rehfuss attributed this to degradation but both ballcaps were stored in the same room, under the same conditions.

Why one ballcap degraded more than the other was never explained and the jury never heard any of this because without the LSU ballcap, there was nothing to relate it to. This severely prejudiced Petitioner's defense.

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[59] *Id.*, at 694.

[60] RR 8, pp. 101–110.

[61] *Id.*

CONCLUSION AND PRAYER

Petitioner prays that this Honorable Court grant certiorari to determine whether, when the police violate State criminal law, Federal and State regulations, and their own procedures and policies in disposing of and failing to preserve evidence, that shows bad faith and, if so, whether the defendant is denied Due Process of law and a fair trial.

Petitioner also prays that this Honorable Court grant certiorari to determine whether when the State produces evidence to the defense but objects to its use during trial because there is no one who can authenticate it, a defendant's rights under the confrontation clause of the Sixth Amendment, substantive Due Process rights and a defendant's right to present a complete defense are violated.

Petitioner further prays that this Honorable Court grant certiorari to determine whether when investigating officers document a ballcap as having been found at the crime scene, in a specific location and place it in the Evidence Room, as evidence from the crime scene, the defendant may be prohibited from using that ballcap for confrontation and cross-examination of witness—merely because it is not seen in any photographs taken at the crime scene—without thereby depriving the defendant of his right to a fair trial, and his rights under the Confrontation Clause?

Petitioner prays for general relief.

Respectfully submitted,

/s/ Leonard Thomas Bradt

_____

Leonard Thomas Bradt
14090 Southwest Freeway, Suite 300
Sugar Land, Texas 77478
(281) 201-0700
Fax: (281) 201-1202
ltbradt@flash.net
Counsel of record

Tracy D. Cluck
S.B.O.T. # 00787254
12600 Hill Country Blvd., # R-275
Austin, Texas 78738
(512) 329-2615
Fax: (512) 329-2604
tracy@tracyclucklawyer.com
Of counsel

APPENDIX 1

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

7/22/2020 **COA No. 14-17-00958-CR**
FRANCIS, CHIRON SHARROL **Tr. Ct. No. 14-DCR-066778** **PD-0306-20**

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

Deana Williamson, Clerk

STATE PROSECUTING ATTORNEY
STACEY SOULE
P. O. BOX 13046
AUSTIN, TX 78711
* DELIVERED VIA E-MAIL *

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

7/22/2020 **COA No. 14-17-00958-CR**
FRANCIS, CHIRON SHARROL **Tr. Ct. No. 14-DCR-066778** **PD-0306-20**

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

Deana Williamson, Clerk

14TH COURT OF APPEALS CLERK
CHRISTOPHER A. PRINE
301 FANNIN, SUITE 245
HOUSTON, TX 77002-7006
* DELIVERED VIA E-MAIL *

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P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

7/22/2020 **COA No. 14-17-00958-CR**
FRANCIS, CHIRON SHARROL **Tr. Ct. No. 14-DCR-066778** **PD-0306-20**

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

Deana Williamson, Clerk

DISTRICT ATTORNEY FORT BEND COUNTY
301 JACKSON, ROOM 101
RICHMOND, TX 77469
* DELIVERED VIA E-MAIL *

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

7/22/2020 **COA No. 14-17-00958-CR**
FRANCIS, CHIRON SHARROL **Tr. Ct. No. 14-DCR-066778** **PD-0306-20**

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

Deana Williamson, Clerk

L. T. "BUTCH" BRADT
14090 SOUTHWEST FREEWAY
SUITE 300
SUGAR LAND, TX 77478
* DELIVERED VIA E-MAIL *

APPENDIX 2

Affirmed as Modified and Memorandum Opinion filed October 29, 2019.

In The

Fourteenth Court of Appeals

NO. 14-17-00958-CR

CHIRON SHARROL FRANCIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 268th District Court
Fort Bend County, Texas
Trial Court Cause No. 14-DCR-066778

MEMORANDUM OPINION

A jury found appellant Chiron Sharrol Francis guilty of two counts of murder. The jury assessed punishment for each conviction at confinement for seventy-five years and a fine of $5,000. The trial court ordered the sentences to run consecutively. Following the denial of appellant's motion for new trial, this timely appeal ensued. We affirm each count as to eleven of the twelve issues asserted by appellant. We overrule in part and sustain in part appellant's tenth issue as to both counts, modify

the trial court's judgment in both counts to reflect appellant's sentences are to be served concurrently, and as to both counts affirm the judgments as modified.

BACKGROUND

Appellant was charged with intentionally and knowingly causing the death of Eric L. Heidbreder by shooting him with a deadly weapon, a firearm (count 1). Appellant also was charged with intentionally and knowingly causing the death of Douglas H. Schwartz by shooting him with a deadly weapon, a firearm (count 2).[1] Both shootings occurred on April 11, 1994, in Fort Bend County, Texas. Appellant left the country in May 1994. In August 1994, an arrest warrant was issued for appellant. Appellant was detained in Caracas, Venezuela, sometime before June 16, 2014. In July 2014, appellant was charged with both murders, and in November of 2014, an application for extradition was submitted to Venezuelan authorities. Appellant was extradited in June 2015 and indicted for both homicides. Trial began in the fall of 2017, after multiple pretrial hearings were held in 2016 and 2017.

CLAIM OF INSUFFICIENT EVIDENCE

Because appellant's ninth issue, if sustained, would afford the greatest relief, we address it first. In his ninth issue appellant contends the evidence is insufficient to support the jury's verdict on both counts. Although appellant also challenges factual sufficiency of the evidence, we only address whether the evidence is legally sufficient. *See Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010).

[1] *See* Act of May 24, 1973, 63d Leg., R.S., ch. 399, § 1, sec. 19.02, 1973 Tex. Gen. Laws 883, 913, *amended by* Act of May 28, 1973, 63d Leg., R.S., ch. 426, art. 2, § 1, sec. 19.02, 1973 Tex. Gen. Laws 1122, 1123 (1973 Penal Code § 19.02) (amended 1993) (current version at Tex. Penal Code § 19.02).

Standard of Review

We apply a legal-sufficiency standard of review in determining whether the evidence supports each element of a criminal offense that the State is required to prove beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318–19, (1979); *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013); *see Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011). Under this standard, we examine all the evidence adduced at trial in the light most favorable to the verdict to determine whether a jury was rationally justified in finding guilt beyond a reasonable doubt. *Temple*, 390 S.W.3d at 360; *Criff v. State*, 438 S.W.3d 134, 136–37 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd). We consider all evidence in the record, whether admissible or inadmissible. *Winfrey v. State*, 393 S.W.3d 763, 767 (Tex. Crim. App. 2013). We also consider both direct and circumstantial evidence, as well as any reasonable inferences that may be drawn from the evidence. *See Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We will uphold the jury's verdict unless a rational factfinder had a reasonable doubt as to any essential element. *Laster v. State*, 275 S.W.3d 512, 518 (Tex. Crim. App. 2009); *West v. State*, 406 S.W.3d 748, 756 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd).

We consider all evidence presented at trial, but we do not re-evaluate the weight and credibility of the evidence or substitute our judgment for that of the fact finder. *See Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Because the jury is the sole judge of the witness's credibility and the weight given their testimony, we resolve any evidentiary conflicts or inconsistencies in favor of the verdict. *See Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000).

The Evidence

Schwartz's body was found in the driver's seat of a red Mazda on Park Manor. Heidbreder's body was on the pavement near the passenger side of the vehicle. Each complainant had three gunshot wounds to the head from a 9-millimeter handgun.

Appellant's defensive theory at trial was that he was not present when the complainants were shot. Accordingly, we discuss the evidence as it relates to the identity of the person who intentionally and knowingly caused the deaths of the complainants by shooting them with a firearm.

An expert for the defense, Louis Akin, prepared a video reconstruction of the shootings. The substance of Akin's testimony was that the shooter stood outside the car on the passenger's side. According to Akin, most of the shots were fired with the handgun held inside the car, as the shooter leaned into the car. Akin testified that Heidbreder was probably pulled out of the car, and he expected the person who pulled Heidbreder out of the car came in contact with Heidbreder's blood.

Raul Velasquez lived nearby. After hearing gunshots, he looked out the window and saw a man wearing a black cap and brown vest exit the backseat of a little red car on the passenger side. Velasquez saw that man drag another man out of the car. Velasquez moved to another window and saw the man in the vest on the other side of the bayou getting on a bike. Other than the man on the ground, the only person Velasquez saw was the man in the vest.

Officer Jack Greenwood testified that Velasquez described the person he saw as a light-complexioned male wearing a white baseball cap turned backwards, a

brown vest, and dark pants. The man was about 5'7" or 5'8" tall and weighed 130 to 140 pounds.

Ralph Pawek lived on the opposite side of the bayou from Velasquez. Pawek was in front of his house, near the street, when he heard multiple gunshots. Pawek saw the shooter by the passenger's side door of a little red car. Pawek described the man's complexion as brownish and thought he was Mexican; he had a white hat on backward. The man reached into the car and fired three more shots. Pawek then saw him take a white envelope from the area of the glove box. The man started towards the bayou, walking fast. Pawek went to the backyard to avoid being seen, and after a few minutes, looked but did not see the man. Pawek did not see anyone else.

Roy Hammond was working his first day on a new postal route when he heard "bam, bam, bam." Hammond looked across the bayou and saw someone leaning over a red car as if talking to someone on the passenger's side. Hammond proceeded on his route and when he returned to that area, Hammond saw a light-skinned black or Hispanic man on a bicycle.

Veronica Wells lived on Park Manor. Her children were playing outside when she heard what she thought could be shots. Wells stepped outside and saw a man trot by. Wells checked on her children and went inside. Wells was subsequently shown a photographic lineup and identified the man she saw that day by signing the back of the photograph. The man she identified was appellant. The photographic lineup was admitted into evidence.

Two pagers were found at the scene. One pager was on the ground by the right front tire and the other pager was on Schwartz's body. On April 11, 1994, at 8:19 a.m., a call was made from Schwartz's apartment to appellant's pager. There were two numbers registered to appellant: (1) a pager number that was disconnected less

than a day after the shootings; and (2) a phone number assigned to appellant's home address that was disconnected approximately two hours after the shootings.

John Chulsoo Paek, a close friend and housemate of Heidbreder, gave a video statement on April 26, 1994, that was admitted into evidence. Paek also knew Schwartz. The night of April 10, 1994, Schwartz made arrangements to purchase sixty pounds of marijuana for $24,000. Schwartz had $11,000, Heidbreder had $9,000, and Paek had $4,000. Schwartz did not reveal the name of the dealer but said he drove an Impala.

The deal was planned for April 11, 1994, because Schwartz's money was in a safe-deposit box, and he could not access it until the bank opened at 9:00 a.m. on Monday morning. About 10:00 a.m. on April 11, 1994, Paek and Heidbreder flew to Hobby Airport in Houston. Schwartz drove to Houston. Heidbreder and Paek were to check into a motel near the Astrodome and the deal would occur in the room. Heidbreder and Paek were picked up at the airport by Kelly King and his girlfriend, Katherine Aires. Around 11:15 a.m., Heidbreder and Paek checked into a motel.

Schwartz arrived at the motel about 12:15 p.m. and said the plan had changed. Schwartz was going to pick up the dealer at Taco Bell. While Schwartz was gone, Paek tried to talk Heidbreder out of the deal—believing it was a setup. Paek advised Heidbreder to leave the money at the motel and sit in the back seat of the car with Schwartz's gun. Paek had seen Schwartz's gun, a 9-millimeter, and Schwartz had told Paek that he never went to Houston without it.

When Schwartz returned, Heidbreder left with his and Paek's money in several white envelopes. Paek saw Heidbreder get in the front seat and a black male, wearing a baseball hat and shorts, climb into the back seat. Paek could not guess his height or weight.

Paek waited in the hotel room. About 4:30 p.m., Katherine Aires and Kelly King returned. When they saw the news at 5:00 p.m., they went to the police and Paek and King gave a statement.

Reynaldo Butanda testified appellant was a friend that he had known since junior high school. In the spring of 1994, appellant drove a green Chevy Impala and a brown or beige Suburban. On April 11, 1994, appellant arrived at Butanda's home on a bike. Appellant was wearing a "beanie type cap" and a brown vest but Butanda did not recall if appellant was wearing shorts or pants. Appellant needed a ride so Butanda and his neighbor drove appellant to a fast-food restaurant where appellant's Suburban was parked.

Butanda next spoke to appellant over the phone. Appellant was "panicky," and told Butanda, "I did it; I did it." Butanda went to see appellant at Athena Scopelitis' apartment. Scopelitis was not present when appellant told Butanda, "I did it, I did them in." Appellant told Butanda that he took a bike to the bayou and went back to where he had left his vehicle, and someone picked him up. He said he "did it" and then got on his bike and went to Butanda's house. The shootings occurred about three to four miles from Butanda's house. Appellant showed Butanda money in a white envelope. In a field by Scopelitis' apartment, appellant walked up to a pile, poured gas on it, and lit it on fire. Butanda did not know what was in the pile. Butanda could not be certain whether this occurred on the same day appellant came to his house on the bike, or the next day.

Butanda saw reports of the murders on the news and recognized Schwartz, whom he had seen more than once at appellant's apartment. Butanda confronted appellant and asked him if Schwartz was one of the people that he "did in." Appellant replied, "Yes." Appellant told Butanda that he met Schwartz that day to sell him

some "weed." The last time Butanda saw appellant, appellant said he was leaving and Butanda probably would not see him again.

On cross-examination, Butanda testified the largest amount of "weed" he saw appellant with was about a pound. Butanda also admitted that he may have been in custody as a material witness when he gave his statement, and that the police mentioned that Butanda fit the description of the suspect. Butanda testified that appellant was taller than he was and more muscular; Butanda considered himself small-built. Butanda identified appellant in a picture that was taken in May of 1994, and stated that appellant's hair looked like that the last time Butanda saw him. Butanda agreed that appellant's hair, except for the bottom part, would have been inside the beanie or skull cap. Butanda agreed that he asked about a reward flier for $11,000, but denied asking if he could collect it.

Zev Isgur had known Schwartz since grade school. Isgur had transported marijuana to Austin for Schwartz. The last time Isgur did so was two Saturdays before the shootings. Isgur denied setting up a meeting between Schwartz and another supplier, Andre Jones. Isgur said Schwartz and Jones knew each other well enough to call each other directly. According to Isgur, Schwartz was "constantly" in that neighborhood, and Isgur had waited with Schwartz at the same place where Schwartz was killed.

Athena Scopelitis testified that in 1994 she had known appellant for a few years. In May 1994, she went to the Dominican Republic with appellant and returned in October of that year. According to her trial testimony, appellant did not tell Scopelitis why he wanted to leave the country. Appellant did not return to the United States with Scopelitis; she testified she had not seen appellant since leaving the Dominican Republic. Scopelitis stated that she did not recall talking to police or

giving an affidavit. Scopelitis recalled appellant and "Rey"[2] coming to her apartment but nothing more. She testified appellant did not seem upset. Scopelitis was unaware about appellant telling federal officers that he fled because he was afraid.

Scopelitis testified that after having no contact for almost twenty years, appellant's mother contacted her a few months before trial, and they spoke several times. The most recent contact was about a week before trial. Scopelitis denied that appellant's mother told her what to say and claimed to be nervous because she believed members of the complainants' families might try to retaliate. Scopelitis denied knowing anything about the shootings when they happened and claimed appellant never talked to her about it. She said appellant had an old Impala and his other vehicle was a Suburban.

An affidavit by Scopelitis from October 1994 was admitted into evidence. Scopelitis averred:

> . . . I had a friend named Chiron Francis [appellant]. I had known Chiron him [sic] for about three years. . . . I knew that Chiron was a narcotics dealer and mainly dealt marijuana. . . .At that time, he owned a brown Suburban, but he didn't drive it very much. Through Chiron, I met a friend of his named "Ray." At the time, I did not know if "Ray" was involved in Chiron's narcotics transactions. I came to know that Ray owned a couple of guns, one of which was a handgun.
>
> Sometime during the middle of April, 1994, . . .Chiron came over. . . . He stayed for awhile and then he left. He came back in a couple of hours. . . . and after about 20 minutes Ray came in also. . . . I began to get the feeling that something was going on between Chiron and Ray. . . . I asked Chiron to go outside with me to check the mail so I could speak with him alone. I asked him "Is there something going on" [sic] Chiron at first said that there was nothing going on, but then told me that he was involved in a murder in Houston, Tx. and that it was a white boy that got killed. I asked Chiron where they [sic] killing had happened and he told me that it was in Southwest Houston. I asked him who had

[2] Scopelitis claimed not to know if "Rey" was Reynaldo Butanda.

> been killed and if it was anyone that we knew. He just kept saying, "Don't worry. You don't want to get involved."
>
> Later, Chiron and Ray left. . . . While they were gone, I went over to a friend of mine's apartment. . . . I told her that I was scared and I thought that Chiron was involved in some type of murder. . . .
>
> When they returned, Ray stayed in the living room and Chiron and I went into the bedroom. I asked him where he had been and he told me that they had been "back there burning some clothes." I asked him whose clothes. Chiron didn't answer but just looked at me. He kept stating to me, "I don't want to tell you too much. You don't want to get involved!" I assumed that the burnt clothes had something to do with the murder that Chiron told me he was involved in. Over the next couple of days, I continued to question him about the murder and all he ever told me was, "Don't worry about it; I don't want you to get involved!" About three days after he told me about the murder, Chiron told me that we needed to go away for a while. He suggested the Caribbean and I suggested that we go to the Dominican Republic. I suspected that the reason he wanted to leave the United States, but he never actually told me that it was the reason.
>
> We got our passports and left for the Dominican Republic the first week of May, 1994. Before we left the States, I saw Chiron counting some money inside my apartment. I recall him telling me that it was about six thousand dollars. . . . I was having problems with my pregnancy and I wanted to come back to the States so I came back this past Monday night. Chiron told me that he would come back later but I don't think he will ever come back. . . .

Scopelitis stated she did not know if "Ray" was Rey Butanda but agreed that he was Latino and shorter than appellant. Scopelitis "guessed" the passport photo of appellant admitted into evidence showed his appearance in 1994 and said appellant was "bigger" at trial. Scopelitis testified George Ward bore a resemblance to appellant at the time of the shootings and Ward's photograph was admitted into evidence. George also was involved in narcotics trafficking in 1994, but was deceased at the time of trial.

Jack McClain, a special agent with Homeland Security Investigations, took an audio statement from appellant on June 16, 2014, while appellant was at a detention center in Caracas, Venezuela. Appellant said he read on the Internet that he was a suspect in a double-homicide that occurred in Texas in 1994. Appellant denied ever killing anyone. Appellant said he left Texas "when the boys were murdered" because he knew them. Appellant admitted that he sold small quantities of "dope." Appellant knew Schwartz, but not the other man, and had seen both complainants on the morning they were killed. According to appellant, Schwartz called him to buy one or two pounds of "weed," which appellant said he did not have because he only had nickel and dime bags. Appellant told Schwartz to call "BJ," his Mexican connection. Appellant talked to Schwartz that morning and put him in contact with "BJ." Appellant told Schwartz to pick him up at a body shop, where appellant left his vehicle. Schwartz and Heidbreder picked appellant up around 9:00 a.m. Appellant sat in the back seat of the car, a red Mazda. They smoked a "joint" and appellant was dropped off at his house around 9:15 a.m. No one else was at his house. Appellant's father came home and saw appellant, but appellant did not remember what time. According to appellant, he was not on Park Manor on April 11, 1994, but stayed home after 9:15 a.m.

According to appellant, he next saw Schwartz and Heidbreder "on the news" and found out what happened to them the following day. Appellant testified he received a call from the Mexican mob and was told to be careful or they would come for him next. Appellant said he was scared. Appellant left his father's house and went to his girlfriend's house in Sugar Land and stayed with her for a week. According to appellant, he continued to receive death threats from the Mexican mob. Rey and others told appellant "they" were coming for him, but appellant claimed not to know the reason. Appellant speculated it was because he was the only connection

between the Mexican mob and the complainants. Appellant said people were threatening his family, but he did not know if his family had reported it.

Appellant went to the Dominican Republic and stayed for almost two years before going to Africa. Eventually, appellant went to Venezuela.

Analysis

Appellant challenges the sufficiency of the evidence on the grounds the State failed to prove that it was he who intentionally or knowingly caused the deaths of Heidbreder or Schwartz. Appellant does not contest any other element of either offense.[3]

Specifically, appellant argues there was no evidence placing him at the scene, specifically that there were no fingerprints, no DNA, and no shoe prints. Appellant references testimony that the officers processing the scene did not take enough photos, failed to examine or test the complainants' clothing, and asserts there was no positive identification of blood or DNA.

Further, appellant points to Pawek's and Hammond's failure to identify him as the person they saw on April 11, 1994. Appellant also contends witnesses did not describe the suspect as having dreadlocks, even though appellant had dreadlocks at the time that would not have been concealed by a cap. In addition, the witnesses did not describe the suspect as 6'2" tall, which is appellant's height. Wells described appellant as being of medium height but when appellant stood, Wells agreed his height was not "medium." According to appellant, the photograph Wells signed was "old" and therefore did not show how he looked on April 11, 1994. Wells could not identify appellant in court as the person she saw on April 11, 1994, but could only identify the photograph as the one she signed on April 27, 1994.

[3] *See* 1973 Penal Code § 19.02, *supra*, note 1.

Appellant contests Butanda's testimony on several grounds. Butanda was in custody in October 1994 when he gave his statement to police and officers told Butanda that Butanda fit the description of the suspect. Butanda could not provide a specific date when he spoke to appellant over the phone or went to Scopelitis' apartment and Butanda did not describe appellant as having blood on himself, mud on his bike, or being agitated. Further, Butanda's testimony that appellant said he "did it" could have referred to setting up the drug deal. Also, Butanda knew about the Crime Stoppers' reward but did not call to collect the reward or inquire about the reward.

The record reflects appellant admitted to being in the Mazda with Schwartz and Heidbreder the morning of April 11, 1994. He did not claim that had the scene been processed more thoroughly, it would have shown that he was not in the car that day. Appellant claimed he was dropped off at home by 9:15 a.m.; however, Heidbreder and Paek did not leave Austin until after 9:15 a.m. and a call was made from Schwartz's apartment to appellant's pager at 8:19 a.m. From this evidence, a rational trier of fact could have found appellant's testimony was not credible. *See Wesbrook*, 29 S.W.3d at 111 (stating the jury is the sole judge of the witness's credibility and the weight given their testimony).

The record reflects when Wells was shown the lineup, she identified the man in one of the photographs as the man she saw on April 11, 1994. She signed the back of that photograph to indicate her selection. Wells identified her signature on the back of the photograph. Wells admitted that she could not identify the person she saw that day from memory.

The jury heard evidence of the physical descriptions of the suspect given by the witnesses. The jury resolved any conflicts or inconsistencies in light of other evidence. The jury heard testimony that Velasquez and Hammond saw a man on a

bike and appellant arrived at Butanda's home on a bike, which appellant left near the scene of the shootings before being picked up by Schwartz. Paek said Heidbreder took the money with him in white envelopes. Pawek saw the suspect take a white envelope from the car. Appellant showed Butanda money in a white envelope and Scopelitis said appellant had $6,000 in cash. Appellant admitted to Butanda that he killed Schwartz and Heidbreder. Scopelitis' affidavit is consistent with Butanda's testimony. After the day of the murders, appellant disconnected his pager and phone and in May 1994, appellant left the country.

It is not for this court to re-evaluate the weight and credibility of the evidence or substitute our judgment for that of the fact finders. *See William*, 235 S.W.3d at 750. Rather, we resolve any evidentiary conflicts or inconsistencies in favor of the verdict. *See Wesbrook*, 29 S.W.3d at 111. Considering all the evidence in a light most favorable to the verdict, we conclude a rational juror could have found appellant guilty beyond a reasonable doubt of being the person who intentionally or knowingly caused the deaths of Heidbreder and Schwartz by shooting them with a firearm. *See Jackson*, 443 U.S. at 319; *Gear*, 340 S.W.3d at 746. Appellant's ninth issue is overruled as to both counts.

CLAIMS THAT OFFICERS MISHANDLED EVIDENCE

In his first issue, appellant contends he was denied a fair trial in violation of his constitutional rights. *See* U.S. Const. amends. VI, XIV; Tex. Const. art. I, § 19. In his second issue appellant contends the trial court erred by denying his motion to dismiss and his motion to suppress on the grounds officers violated sections 37.09[4]

[4] Act of May 24, 1973, 63d Leg., R.S., ch. 399, § 1, sec. 37.09, 1973 Tex. Gen. Laws 883, 948, *amended by* Act of May 17, 1991, 72d Leg. R.S., ch. 565, § 4, 1991 Tex. Gen. Laws 2003, 2004 (1991 Tex. Penal Code § 37.09) (amended 1997, 2007, 2011) (current version at Tex. Penal Code § 37.09).

and 37.10[5] of the Texas Penal Code. As grounds for both issues, appellant claims the State, acting in bad faith, tampered with, concealed, fabricated, failed to preserve, concealed, and destroyed evidence and falsified government records. We consider these claims pursuant to the statutes in effect on April 11, 1994.

Section 37.09 provided, in pertinent part:

> (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:
>
> (1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or
>
> (2) makes, presents or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

Section 37.10 provided, in pertinent part:

> (a) A person commits an offense if he:
>
> (1) knowingly makes a false entry in, or false alteration of, a governmental record;
>
> (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; or
>
> (3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
>
> (4) makes, presents, or uses a governmental record with knowledge of its falsity. . . .

[5] Act of May 24, 1973, 63d Leg., R.S., ch. 399, § 1, sec. 37.10, 1973 Tex. Gen. Laws 883, 948, *amended by* Act of May 29, 1989, 71st Leg., ch. 1248, § 66, 1989 Tex. Gen. Laws 4996, 5041, *amended by* Act of May 2, 1991, 72d Leg., ch. 113, § 4, 1991 Tex. Gen. Laws 686, 687, *amended by* Act of May 17, 1991, 72d Leg., ch. 565, § 5, 1991 Tex. Gen. Laws 2003, 2004 (1991 Tex. Penal Code § 37.10) (amended 1993, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2013, 2015, 2019) (current version at Tex. Penal Code § 37.10).

In his argument, appellant complaints about specific pieces of evidence. We address these claims below.

Heidbreder's Body

Appellant asserts that Sergeant John Clarke's affidavits establish officers tampered with physical evidence.[6] Specifically, appellant claims officers must have moved Heidbreder's body.

At the hearing on the motion to suppress, Clarke testified that he became involved in this case in 2005 as part of the FBI Task Force on fugitive investigations. He had no personal knowledge of the crime scene. In making his affidavits he relied upon the reports and documents prepared from the investigation. Clarke acknowledged those reports may contain inaccuracies.

Clarke executed two affidavits in July 2014—one in support of appellant's extradition and the other in support of appellant's arrest. Both affidavits were admitted into evidence as exhibits during the hearing on appellant's motion to suppress. The affidavit in support of extradition states the information presented "was obtained through witness interviews, the collection of evidence, and other sources." The affidavit for the arrest warrant is based upon Clarke's review of an offense report.

Both affidavits state that Heidbreder was in the front passenger's seat. Appellant points out this statement is inconsistent with the photographic evidence of the crime scene. It is also inconsistent with evidence adduced at trial. Pawek testified he saw the suspect pull the passenger out of the car, and appellant's expert, Akin, testified that he believed the shooter pulled Heidbreder from the car.

[6] 1991 Tex. Penal Code § 37.09, *supra*, note 4.

There is no evidence officers moved Heidbreder's body or that Clarke's affidavit is perjurious. Rather, there is an inconsistency between the report on which Clarke relied and the evidence adduced. There is no evidence that officers altered any "thing" with intent to impair its verity, or availability as evidence in the investigation. Accordingly, the record does not reflect an offense under section 37.09 was committed.

Shell Casings

Appellant suggests officers falsified government records.[7] Appellant complains of an entry in the Current Information Report ("CIR") which refers to seven shell casings. However, a photograph of the interior of the car shows a shell casing not referred to in the CIR—the eighth shell casing. Further, the Investigator's Report states bullet "casings" (plural) were found adjacent to the right front wheel of the car even though the photograph shows only one casing—the ninth shell casing. There is no evidence that officers falsely, rather than mistakenly, reported the number of shell casings or made the report with knowledge of its falsity. Accordingly, the record does not reflect an offense was committed.

The LSU Cap

Next, appellant contends officers tampered with evidence and a government record by "planting" an LSU cap in the car. Photographs taken at the crime scene show only one baseball cap—a red and blue "KC" cap. An LSU cap was collected as evidence by an officer who was deceased at the time of trial. However, the LSU cap is not shown in any of the photographs of the crime scene. Further, appellant contends the LSU cap is not shown in any of the photographs of Schwartz and was

[7] 1991 Tex. Penal Code § 37.10, *supra* note 5.

not listed among Schwartz's clothing in the autopsy report, despite being listed in the CIR, which states:

> RED AND BLUE "KC" BALLCAP WHICH WAS ATOP A PURPLE AND GOLD "LSU" BALLCAP, BOTH ATOP [Schwartz's] HEAD.

Also, appellant argues the LSU cap had two bullet holes, neither of which lined up with the single bullet hole in the KC cap. And lastly, appellant avers the LSU cap tested negative for the presence of human blood. According to appellant, this all leads to "the inescapable conclusion . . . the LSU ballcap was planted by the police."

Appellant's characterization of the test results is inaccurate. Juli Rehfuss, a criminalist with the Houston Forensic Science Center, testified during the hearing on appellant's motion to suppress that she processed stains on both caps for the presence of blood. Rehfuss performed a Hematrace Test, which would confirm whether or not the stains were human blood, and the results were negative. Rehfuss explained the results as follows, "the item responded negatively to human origin testing by Hematrace because . . . there probably either wasn't enough sample there or the proteins were too degraded to actually register on the test." Thus, the blood test results were negative, but not necessarily because the sample was not human blood. Rehfuss further testified that she sent the sample for DNA testing, and the DNA analyst's report did give a single source human male DNA profile. There is an inconsistency between the report and the evidence adduced but there is no evidence officers planted the LSU cap in the car.

The fact that the LSU cap had two bullet holes that did not align with the single bullet hole in the KC cap is evidence the CIR report is incorrect. This is supported by a photograph showing the KC cap on Scwhartz's head. There is not another cap under the KC cap, which fits snugly. Thus, the report is inaccurate but does not establish officers planted evidence with intent to impair its verity or

availability in the investigation. Accordingly, the record does not reflect an offense was committed.[8]

The Car

Appellant complains the car was released with no evidence having been collected from it. Specifically, appellant notes that no DNA samples were taken, no fingerprints were lifted, no tests for gunshot residue were performed, no measurements were taken, and no trajectories were calculated. However, in his audio statement to McClain, appellant admitted to being in the back seat of the car on the morning of the shootings. Appellant admitted that he was in the back seat of the car before the shootings and therefore evidence from inside the car would not have exculpated him. The release of the car does not establish officers destroyed evidence with intent to impair its availability as evidence in the investigation. Accordingly, the record does not reflect an offense was committed.[9]

Denial-of- Due-Process or Due-Course-of-Law Claim

Appellant contends the inconsistencies described above and the failure of the State to preserve evidence amount to a denial of his rights to due process and due course of law. Further, appellant contends these evidentiary issues establish violations of the 1991 Texas Penal Code section 37.09, and therefore the evidence should have been suppressed and the cases against him dismissed.[10]

The State has a duty to preserve exculpatory evidence and potentially useful evidence. *State v. Vasquez*, 230 S.W.3d 744, 749 (Tex. App.—Houston [14th Dist.]

[8] The State's case was not based upon the LSU cap or any forensic evidence derived therefrom.

[9] Furthermore, the State's case was not based upon any forensic evidence taken from the car.

[10] Appellant presented these arguments to the trial court in his motion to suppress and motion to dismiss. For purposes of this appeal, we assume without deciding that violations of the

2007, no pet.). There is a distinction between "material, exculpatory evidence" and "potentially useful evidence." *Id.* at 747. Potentially useful evidence is "evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." *Arizona v. Youngblood*, 488 U.S. 51, 57–58 (1988).

To show a violation of due process or due course of law based on potentially useful evidence, as opposed to material, exculpatory evidence, the defendant must show the State acted in bad faith. *Vasquez*, 230 S.W.3d at 747 (citing *Illinois v. Fisher*, 540 U.S. 544, 547–48 (2004); *Youngblood*, 488 U.S. at 58 (due process)); *Mahaffey v. State*, 937 S.W.2d 51, 53 (Tex. App.—Houston [1st Dist.] 1996, no pet.) (due course of law)). Similarly, to constitute an offense under the 1991 Texas Penal Code section 37.09, it must be proven the actor had the requisite intent.

When the trial court denied appellant's motions to suppress and dismiss, the court found appellant had presented only supposition and speculation. The trial court found that the State did not act in bad faith and there is no evidence to the contrary in our record. Accordingly, the record supports the trial court's finding that the State did not act in bad faith. Viewing the evidence in the light most favorable to the trial court's ruling, we hold the record adequately supports the trial court's finding that the State did not act in bad faith. *See Jones v. State*, 437 S.W.3d 536, 540 (Tex. App.—Texarkana 2014, pet. ref'd). Accordingly, we hold the trial court did not abuse its discretion in denying appellant's motion to suppress or motion to dismiss. *See Vasquez*, 230 S.W.3d at 747–48 (affirming denial of motion to suppress blood-test results performed on an accused intoxicant's blood sample where the trial court

1991 Texas Penal Code sections 37.09 and 37.10 would render the evidence inadmissible.

found that the blood sample was not destroyed in bad faith); *see also Jones*, 437 S.W.3d at 54. Issues one and two are overruled as to both counts.

CLAIMS OF PERJURY AND FRAUD ON THE COURT

As an alternative to issue one, appellant argues in his third issue that if Sergeant Clarke's affidavits are not perjurious, the State failed to produce *Brady* material.[11] But, appellant contends, if Clarke's affidavits are perjurious, then the trial court erred in failing to find fraud on the court. Further, in issue four, appellant contends that if Clarke's affidavits are perjurious, his due process rights were violated by use of those affidavits to secure his extradition from Venezuela.

We have already concluded in our discussion of appellant's first issue, *supra*, that there is no evidence Clarke's affidavits were perjurious. Appellant asserts that if the affidavits were not perjurious, the State failed to produce *Brady* material. Specifically, appellant complains the State failed to produce evidence "showing the position of the bodies in the car when the police arrived." As set forth in our discussion of appellant's first issue, *supra*, the evidence demonstrates Heidbreder's body was not in the car when the police arrived. Thus there was no evidence "showing the position of [Heidbreder's body] in the car when the police arrived." Accordingly, we overrule issues three and four as to both counts.

CLAIMS THAT EVIDENCE WAS ERRONEOUSLY EXCLUDED

Appellant makes a single argument for his fifth, sixth and seventh issues. In his fifth issue, appellant claims the trial court's exclusion of evidence that the State collected and produced, because there was no one to sponsor it, denied him a fair trial in violation of his federal and state constitutional rights. *See* U.S. Const. amends. VI, XIV; Tex. Const. art. I, § 19. In issue six appellant contends the trial

[11] *Brady v. Maryland*, 373 U.S. 83 (1963).

court's exclusion of evidence denied appellant equal protection of the law because in his criminal trial he was required to have the State authenticate or sponsor the evidence that it produced, but in a civil case the production of items by one party authenticates those items for use against that party. Lastly, in issue seven appellant asserts he was denied his right to substantive due process when *Brady* material was excluded because there was no one to sponsor or authenticate that evidence.

Appellant makes two references to the record where the trial court sustained the State's objections to evidence that he was attempting to introduce. That evidence consisted of photographs of the LSU cap and the KC cap. The two photographs of the KC cap were, in fact, admitted into evidence as defense exhibits. However, the trial court sustained the State's objection to admitting the two photographs of the LSU cap as defense exhibits. The record reflects the LSU cap is not depicted in any of the photographs of the crime scene and the officer who collected the LSU cap as evidence was deceased at the time of trial.

Assuming, without deciding, the trial court erred in excluding the photographs of the LSU cap, we conclude the exclusion of the photographs does not constitute reversible error. Generally, the erroneous exclusion of evidence offered under the rules of evidence constitutes non-constitutional error and is reviewed under Texas Rule of Appellate Procedure 44.2(b).[12] *Walters v. State*, 247 S.W.3d 204, 219 (Tex. Crim. App. 2007). However, the exclusion of evidence might rise to the level of a

[12] Texas Rule of Appellate Procedure 44.2 provides:

> (a) *Constitutional Error*. If the appellate record in a criminal case reveals constitutional error that is subject to harmless error review, the court of appeals must reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment.
>
> (b) *Other Errors*. Any other error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

constitutional violation if: (1) a state evidentiary rule categorically and arbitrarily prohibits the defendant from offering otherwise relevant, reliable evidence vital to the defense; or (2) a trial court's clearly erroneous ruling results in the exclusion of admissible evidence that forms the vital core of a defendant's theory of defense and effectively prevents the defendant from presenting that defense. *Id.; see also Vasquez v. State*, 501 S.W.3d 691, 700 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd).

The record reflects appellant's defense was that he was not present at the scene of the shooting. As discussed in addressing appellant's claim that the evidence was insufficient to support the judgments, appellant stated that he was taken home at 9:15 a.m. and stayed there the rest of the day. Appellant offers no explanation as to how these two photographs were vital to his defense and he makes no claim that their exclusion precluded him from presenting that defense. Nor could we reasonably conclude that the photographs of the LSU cap were so vital to appellant's defense that their exclusion, in light of all the evidence adduced, contributed to his conviction. *See* Tex. R. App. P. 44.2(a). Thus, even under the heightened standard of review for constitutional error, we conclude the trial court's error, if any, was harmless. Issues five, six and seven are overruled as to both counts.

CLAIM THAT EVIDENCE WAS ADMISSIBLE AS AN ANCIENT DOCUMENT

In his eighth issue appellant claims his federal and state constitutional rights were violated when the trial court excluded an "ancient document." *See* U.S. Const. amends. VI, XIV; Tex. Const. art. I, § 19. Specifically, appellant complains the trial court erred in refusing to admit Defendant's Exhibit 109, a written statement dated May 4, 1994, that bears the signature of Islam Mujahid.

Mujahid was driving a garbage truck for the City of Houston on April 11, 1994. He was questioned by police about a red car that he saw at a dead end where

Park Manor intersects with Castlecreek while he was driving his route. During his testimony, defense counsel asked Mujahid about a written statement he gave to police. Mujahid testified that he gave an oral statement, not a written statement. Defense counsel sought to admit a written statement as Defendant's Exhibit 109. Mujahid identified the signatures on both pages of the statement as his but testified the words in the statement above his signature were not there when he signed those two pages. At the close of voir dire, the trial court sustained the State's objection to admitting the statement but gave defense counsel leave "to try to prove this up."

On direct examination, Mujahid testified he saw the red car but that he did not look into the car and did not see anyone inside. Mujahid testified he did not sign "that paper," and did not know how his signature "got there." According to Mujahid, he did not give that statement and "those are not [his] words."

Defense counsel sought to admit Defendant's Exhibit 109 as a prior inconsistent statement. The trial court sustained the State's objection.[13]

Mujahid then speculated those statements were made by the other driver on the truck. When asked if he read the documents before signing them, Mujahid testified, "There was nothing to sign. They just questioned us." Defense counsel then passed the witness, subject to recall.

Another witness testified and proceedings ended for the day. The next day, defense counsel again sought to admit Defendant's Exhibit 109 as an ancient document under Rules of Evidence 803 and 901. Tex. R. Evid. 803, 901. The trial

[13] Appellant does not claim on appeal the statement was admissible as a prior inconsistent statement. *See* Tex. R. Evid. 801(e)(1); *Owens v. State*, 916 S.W.2d 713, 717 (Tex. App.—Waco 1996, no pet.) (concluding witness's voluntary written statement to police did not qualify for Rule 801(e)(1) exclusion from hearsay because the inconsistent statement must have been given under oath subject to the penalty of perjury).

court sustained the State's objection after counsel for the State confirmed that the police officer who took the statement was deceased.

Rule 803(16) provides that "[a] statement in a document that is at least 20 years old and whose authenticity is established" is an exception to the rule against hearsay, regardless of whether the declarant is available as a witness. Tex. R. Evid. 803(16). Rule 901 states that "[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Tex. R. Evid. 901. An example of evidence that satisfies this requirement as to a document is "evidence that it (A) is in a condition that creates no suspicion about its authenticity; (B) was in a place where, if authentic, it would likely be; and (C) is at least 20 years old when offered." Tex. R. Evid. 901(8).

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *Gonzalez v. State*, 544 S.W.3d 363, 370 (Tex. Crim. App. 2018); *Roderick v. State*, 494 S.W.3d 868, 874 (Tex. App.—Houston [14th Dist.] 2016, no pet.). If the trial court's decision is within the bounds of reasonable disagreement, we will not disturb its ruling. *Gonzalez*, 544 S.W.3d at 370. The trial court's ruling will be sustained if it is correct on any theory of law applicable to the case. *Roderick*, 494 S.W.3d at 874.

To authenticate the statement, appellant relies upon Mujahid's identification of his signatures on both pages of the statement. However, Mujahid testified that the words in the statement were not his and he did not know how his signature came to be on those two pages. Thus, the trial court had grounds to find there was some suspicion about the document's authenticity and to refuse to admit it as an ancient document. *See* Tex. R. Evid. 901(8)(A). Issue eight is overruled as to both counts.

CLAIM THAT SENTENCE IS ILLEGAL

In his tenth issue appellant claims the sentences imposed are illegal for three reasons. First, appellant asserts the trial court had no authority to order consecutive sentences because section 3.03 of the Texas Penal Code and article 42.08 of the Texas Code of Criminal Procedure mandate the sentences shall run concurrently.

The version of section 3.03 of the Texas Penal Code in the effect at the time of the offense states:

> When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, sentence for each offense for which he has been found guilty shall be pronounced. Such sentences shall run concurrently.[14]

The applicable version of article 42.08 of the Texas Code of Criminal Procedure provides:

> (a) When the same defendant has been convicted in two or more cases, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction. Except as provided by Subsections (b) and (c), of this article, in the discretion of the court, the judgment in the second and subsequent convictions may either be that the sentence imposed or suspended shall begin when the judgment and the sentence imposed or suspended in the preceding conviction has ceased to operate, or that the sentence imposed or suspended shall run concurrently with the other case or cases, and sentence and execution shall be accordingly. . . .[15]

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[14] Act of May 24, 1973, 63d Leg., R.S., ch. 399, § 1, sec. 3.03, 1973 Tex. Gen. Laws 883, 891 (amended 1995, 1997, 2005, 2007, 2009, 2011, 2013, 2019) (current version at Tex. Penal Code § 3.03).

[15] Act of May 27, 1965, 59th Leg., R.S., ch. 722, §1, art. 42.08, [2] 1965 Tex. Gen. Laws 317, 486, *amended by* Act of Apr. 2, 1985, 69th Leg., R.S., ch. 29, § 1, 1985 Tex. Gen. Laws 404, 404, *amended by* Act of May 30, 1987, 70th Leg., R.S., ch. 513, § 1, 1987 Tex. Gen. Laws 2125, 2125, *amended by* Act of May 28, 1989, 71st Leg., R.S., ch. 785, § 4.11, 1989 Tex. Gen. Laws 3471, 3495, Act of May 8, 1993, 73d Leg., R.S. ch. 900, § 5.03, 1993 Tex. Gen. Laws 3586, 3745, 3752 (amended 2009, 2015, 2017) (current version at Tex. Code Crim. Proc. art. 42.08).

The trial court stated in open court that the two sentences of seventy-five years would be "cumulative." The written judgments do not reflect the sentences are to be cumulative and there is no motion or order in the record before this court to cumulate the sentences. However, since the oral pronouncement controls, appellant's sentences are, in fact, cumulative. *See Coffey v. State*, 979 S.W.2d 326, 328 (Tex. Crim. App. 1998) (holding the sentence pronounced in open court represents the actual sentence and should there arise any conflict between the sentence pronounced in open court and that manifested in the ensuing judgment, the sentence pronounced in open court controls). As a general rule, when the oral pronouncement of sentence and the written judgment vary, the oral pronouncement controls. *Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004); *Ex parte Madding*, 70 S.W.3d 131, 135 (Tex. Crim. App. 2002). Explaining the rationale for this rule, we have stated,

> [T]he imposition of sentence is the crucial moment when all of the parties are physically present at the sentencing hearing and able to hear and respond to the imposition of sentence. Once he leaves the courtroom, the defendant begins serving the sentence imposed. Thus, "it is the pronouncement of sentence that is the appealable event, and the written sentence or order simply memorializes it and should comport therewith."

Madding, 70 S.W.3d at 135 (quoting *Coffey v. State*, 979 S.W.2d 326, 328 (Tex. Crim. App. 1998)).

The trial court's general authority under article 42.08 to order consecutive sentences is statutorily limited by section 3.03 whenever a single criminal action arising out of the same criminal episode occurs. *See LaPorte v. State*, 840 S.W.2d 412, 415 (Tex. Crim. App. 1992), *overruled on other grounds by Ex parte Carter*, 521 S.W.3d 344 (Tex. Crim. App. 2017). "If the facts show the proceeding is a single criminal action based on charges arising out of the same criminal episode, the trial court may not order consecutive sentences." *Id.* Accordingly, we hold that the trial

court erred in failing to order that appellant's sentences shall run concurrently. *Fernandez v. State*, 814 S.W.2d 417, 420 (Tex. App.—Houston [14th Dist.] 1991), aff'd, 832 S.W.2d 600 (Tex. Crim. App. 1992).

Appellant further argues that under the Constitution of Venezuela and the Extradition Treaty between the United States and Venezuela,[16] the sentence of seventy-five years for each count is illegal. According to appellant, because he was born in 1973, a seventy-five-year sentence is an illegal life sentence. Further, appellant contends any sentence greater than thirty years is illegal. Alternatively, appellant argues the United States had to present "satisfactory assurances" that a life sentence would not be imposed.

Appellant presented these arguments to the trial court. In a hearing held on May 22, 2017, the trial court ruled as follows:

> Reading the extradition document as furnished to the Court, the interpretation thereof, the only reference to 30 years is the federal attorney's request of 30 years; and that's the only reference. There has been no limitation placed upon that in the opinion of the Court.
>
> The ruling of the Court itself does not place any limitations; however, it's very clear they were cognizant of the constitution of Venezuela which said no death penalty and no life sentence.
>
> The opinion of the individual from the State Department speaks that they entered no agreements; but the constitution of Venezuela is very clear that they will not extradite upon a life or a death sentence. Therefore, there's no limitation on years; but there is a limitation on life or death; and I will so find.

The recommendation that extradition should be granted "with the condition that [the United States] provide enough guarantees to not subject [appellant] to . . . imprisonment of more than thirty (30) years" does not establish an agreement to

[16] Treaty of Extradition, U.S.-Venez., art. IV, Jan. 19, 1922, 43 Stat.1698, T.I.A.S. No. 765.

limit appellant's sentence to a maximum of thirty years. Appellant did not receive a life sentence for either count—he was sentenced to a term of imprisonment for seventy-five years.

Accordingly, we reject appellant's claim that in each count his sentence of seventy-five years was illegal. We therefore overrule, in part, appellant's tenth issue on both counts. We sustain, in part, appellant's tenth issue on both counts and modify the trial court's judgments to reflect the sentences imposed shall be served concurrently.

CLAIM THAT TRIAL COURT ERRED DURING VOIR DIRE

In his eleventh issue, appellant contends the trial court erred in refusing to strike venirepersons 1–12, 16–20, 24–29, 33–55, 59–63, 65–67, 69–70, 74, 76, 78–81, 84, 87, 89–90, and 96–100 for cause. Of these venirepersons, eleven served on appellant's jury (Nos. 4, 7, 8, 11, 26, 29, 34, 36, 37, 39 and 40).

To preserve error for a trial court's erroneous denial of a challenge for cause, appellant must show that: (1) he asserted a clear and specific challenge for cause; (2) he used a peremptory challenge on the complained-of venire member; (3) his peremptory challenges were exhausted; (4) his request for additional strikes was denied; and (5) an objectionable juror sat on the jury. *Comeaux v. State*, 445 S.W.3d 745, 750 (Tex. Crim. App. 2014); *see also Landers v. State*, 110 S.W.3d 617, 624 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd) (holding error in the denial of a challenge for cause was not preserved for review because defense counsel failed to use an available peremptory challenge against the allegedly objectionable juror). The record reflects appellant did not request any additional strikes and therefore failed to preserve his issue for appellate review. *See* Tex. R. App. P. 33.1. We overrule issue eleven on both counts.

CLAIM THAT VIDEO RECORDING SHOULD HAVE BEEN TRANSCRIBED

In his twelfth and final issue appellant complains of this court's refusal to abate this appeal and order the court reporter to transcribe the video recording of a statement by John Chulsoo Paek. To complain of a court reporter's failure to transcribe the audio portion of a videotaped statement that was played to the jury during the guilt-innocence and punishment phases of the trial, the defendant must have preserved error by objecting before the trial court. *See Williams v. State*, 937 S.W.2d 479, 486 (Tex. Crim. App. 1996). Appellant did not object and therefore waived any such complaint on appeal. *See* Tex. R. App. P. 33.1(a). Issue twelve is overruled as to both counts.

CONCLUSION

The judgment of the trial court in each count is modified to reflect that the sentences run concurrently. As modified, the judgments are affirmed.

Based on this disposition, it is unnecessary to address the State's issue on cross-appeal that it should be able to seek a life sentence if the case is reversed and remanded for a new trial.

/s/ Margaret "Meg" Poissant
Justice

Panel consists of Chief Justice Frost and Justices Spain and Poissant.

Do Not Publish — Tex. R. App. P. 47.2(b).

APPENDIX 3

FILE COPY

Fourteenth Court of Appeals

301 Fannin, Suite 245
Houston, Texas 77002

Thursday, January 9, 2020

Jason Travis Bennyhoff
Assistant District Attorney
309th South 4th St.
2nd Floor
Richmond, TX 77469
* DELIVERED VIA E-MAIL *

L. T. "Butch" Bradt
Teltschik & Associates
14090 Southwest Freeway
Suite 300
Sugar Land, TX 77478
* DELIVERED VIA E-MAIL *

John Harrity, III
Assistant District Attorney
Fort Bend County
301 Jackson, Room 101
Richmond, TX 77469
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 14-17-00958-CR
Trial Court Case Number: 14-DCR-066778

Style: Chiron Sharrol Francis
v.
The State of Texas

Please be advised that on this date the Court **DENIED APPELLANT'S** motion for rehearing in the above cause.

Panel Consists of Chief Justice Frost and Justices Spain and Poissant

Sincerely,

/s/ Christopher A. Prine, Clerk

cc:

APPENDIX 4

FILE COPY

Fourteenth Court of Appeals

301 Fannin, Suite 245
Houston, Texas 77002

Thursday, April 2, 2020

Jason Travis Bennyhoff
Assistant District Attorney
309th South 4th St.
2nd Floor
Richmond, TX 77469
* DELIVERED VIA E-MAIL *

L. T. "Butch" Bradt
Teltschik & Associates
14090 Southwest Freeway
Suite 300
Sugar Land, TX 77478
* DELIVERED VIA E-MAIL *

John Harrity, III
Assistant District Attorney
Fort Bend County
301 Jackson, Room 101
Richmond, TX 77469
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 14-17-00958-CR
Trial Court Case Number: 14-DCR-066778

Style: Chiron Sharrol Francis
v.
The State of Texas

Please be advised that on this date the court **DENIED APPELLANT'S** motion for rehearing en banc in the above cause.

Panel Consists of Chief Justice Frost and Justices Christopher, Wise, Jewell, Bourliot, Zimmerer, Spain, Hassan and Poissant

Sincerely,

/s/ Christopher A. Prine, Clerk

cc:

APPENDIX 5

14-DCR-066778
CONGJV
Conviction - Not Guilty Plea Jury Verdict
5048899

CAUSE NO. 14-DCR-066778
CT I

THE STATE OF TEXAS	'	**IN THE DISTRICT COURT OF**
VS.	'	**FORT BEND COUNTY, TEXAS**
CHIRON SHARROL FRANCIS	'	**268TH JUDICIAL DISTRICT**

JUDGMENT ON JURY VERDICT OF GUILTY
PUNISHMENT FIXED BY JURY - NO PROBATION GRANTED

Judge Presiding: BRADY G. ELLIOTT
Date of Judgment: NOVEMBER 7, 2017
Attorney for State: MATTHEW BANISTER AND MARK HANNA
Attorney for Defendant: L T BRADT AND KEYSHA BOOKER
Offense Convicted of: CT I MURDER
Degree: F1 Date Offense Committed: APRIL 11, 1994
Charging Instrument: INDICTMENT Plea: NOT GUILTY
Jury Verdict: GUILTY Foreman: ROGER VAZQUEZ
Plea to Enhancement Paragraph(s): NOT APPLICABLE
Findings on Enhancement: NOT APPLICABLE
Findings on Use of Deadly Weapon: TRUE
Date Sentence Imposed: NOVEMBER 7, 2017 Court Costs: $457.50 Fine: $5,000.00
Punishment and Place of Confinement: CT I MURDER: 75 YEARS TEXAS DEPARTMENT OF CRIMINAL JUSTICE
Time Credited: 1244 DAYS Date to Commence: NOVEMBER 7, 2017

This 7th day of November, 2017, this cause was called for trial, and the State appeared by her District Attorney as named above and the Defendant named above, having been duly arraigned, appeared in person, in open court, his counsel also being present, and both parties announced ready for trial; thereupon a jury of good and lawful persons, including the Presiding Juror as named above, and eleven others, was duly selected, impaneled and sworn, according to law; the indictment was read, and the defendant entered his plea of not guilty thereto, and evidence for the State and the Defendant was submitted and concluded, and the Court charged the jury as to the law applicable to said cause, and argument of counsel for the State and the Defendant was duly heard and concluded, and the jury retired in charge of the proper officer to consider of their verdict; and afterward was brought into open court by the proper officer, the Defendant and his counsel being present, and in due form of law returned into open court the verdict indicated above, which was received by the Court and is here now entered upon the minutes of the Court, to-wit: We, the Jury, find the Defendant, **CHIRON SHARROL FRANCIS**, guilty of the felony offense of **CT I MURDER** as charged in the indictment;

and was signed by the Presiding Juror.

Thereupon the same jury was duly impaneled to assess said Defendant's punishment in said cause, and the evidence submitted for the State and for the Defendant was duly heard, and at the conclusion of such evidence, the Court charged the jury with additional written instructions as to the punishment in said cause; thereupon the argument of counsel for the State and the Defendant was duly heard and concluded; and the jury retired in charge of the proper officer to consider of their verdict as to Defendant's punishment; and afterward was brought into open court by the proper officer, the Defendant and his counsel being present, and in due form of law returned into open court the following verdict, which was received by the Court and is here now entered upon the minutes of the Court, to-wit: We, the Jury, having found the Defendant guilty of **CT I MURDER** as charged in the indictment, now assess the punishment of the defendant at confinement in the Institutional Division of the Texas Department of Criminal Justice for a term of **75 YEARS**, and was signed by the Presiding Juror.

It is THEREFORE CONSIDERED AND ADJUDGED by the Court that the Defendant named above is guilty of the offense named above as found by the jury, and that he be punished as found by the Jury, that is by confinement in the Institutional Division of the Texas Department of Criminal Justice for the period indicated above and that the State of Texas do have and recover of the said Defendant all costs in this prosecution, for which execution may issue.

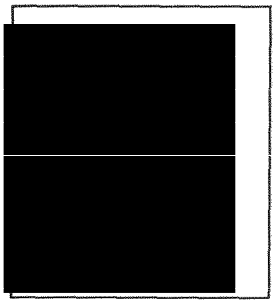
And thereupon the said Defendant was asked by the Court whether he had anything to say why sentence should not be pronounced against him, and he answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of said Defendant, to pronounce sentence against him as follows, to-wit: "It is the order of the Court that the Defendant, named above who has been adjudged to be guilty of the offense indicated above, a felony, and whose punishment has been assessed at confinement in the Institutional Division of the Texas Department of Criminal Justice for the period indicated above, be delivered by the Sheriff of Fort Bend County, Texas, immediately to the Director of the Institutional Division of the State of Texas, or other person legally authorized to receive such convicts, and said Defendant shall be confined in said Institutional Division for the period indicated above, in accordance with the provisions of the law governing the Institutional Division of the Texas Department of Criminal Justice."

The said Defendant was remanded to jail until said Sheriff can obey the directions of this sentence.

Signed and entered this 9th day of November, 2017

JUDGE PRESIDING

DEFENDANT'S RIGHT INDEX FINGER:



FILED
NOV 09 2017
AT 1:45 P M.
Clerk District Court, Fort Bend Co., TX

ATTEST:

District Clerk
Fort Bend County, Texas

By: _____
Deputy

INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

STATEMENT OF FACTS

CAUSE NO.: 14-DCR-066778 -CT I

DEFENDANT'S NAME: CHIRON SHARROL FRANCIS

COURT: 268TH DISTRICT COURT, FORT BEND COUNTY, TEXAS

NATURE OF OFFENSE: **CT I MURDER**

SERIOUSNESS OF OFFENSE:

	YES	NO
PHYSICAL VIOLENCE INVOLVED	XX	
DEADLY WEAPON INVOLVED	XX	
DAMAGE TO PROPERTY INVOLVED	XX	

DEGREE OF FELONY:

XX 1ST ____ 2ND ____ 3RD ___ CAPITAL

PENAL CODE SECTION UNDER WHICH DEFENDANT WAS CONVICTED:
19.02 (b)(1)

NO. 14-DCR-066778
CT I MURDER

THE STATE OF TEXAS	'	IN THE DISTRICT COURT OF
VS.	'	FORT BEND COUNTY, TEXAS
CHIRON SHARROL FRANCIS	'	268TH JUDICIAL DISTRICT

ORDER OF COMMITMENT

On the 7TH day of November, 2017, the above-named defendant was found guilty of the offense of **CT I MURDER** and on the 7TH day of November, 2017, was sentenced to be confined for **75** years in the Texas Department of Criminal Justice, which sentence is hereby incorporated for all reasons.

It is therefore ORDERED, ADJUDGED and DECREED by the Court that the defendant be immediately delivered to the Director of the Texas Department of Criminal Justice of Huntsville, Texas, or such other person legally authorized to receive such person, there to be confined and imprisoned for **75** years , according to the judgment and sentence of this Court and the defendant is hereby remanded into the custody of the Sheriff of Fort Bend County, Texas, where said defendant shall remain until said Sheriff can carry out the order of the Court.

SIGNED this the 9th day of November, 2017.

Judge Presiding

FILED

NOV 09 2017

AT 1:45 PM

Clerk District Court, Fort Bend Co., TX

14-DCR-066778
ORDER
Order
5048900

CAUSE NO. 14-DCR-066778
CT II

THE STATE OF TEXAS	'	**IN THE DISTRICT COURT OF**
VS.	'	**FORT BEND COUNTY, TEXAS**
CHIRON SHARROL FRANCIS	'	**268TH JUDICIAL DISTRICT**

JUDGMENT ON JURY VERDICT OF GUILTY
PUNISHMENT FIXED BY JURY - NO PROBATION GRANTED

Judge Presiding: BRADY G. ELLIOTT
Date of Judgment: NOVEMBER 7, 2017
Attorney for State: MATTHEW BANISTER AND MARK HANNA
Attorney for Defendant: L T BRADT AND KEYSHA BOOKER
Offense Convicted of: CT II MURDER
Degree: F1 Date Offense Committed: APRIL 11, 1994
Charging Instrument: INDICTMENT Plea: NOT GUILTY
Jury Verdict: GUILTY Foreman: ROGER VAZQUEZ
Plea to Enhancement Paragraph(s): NOT APPLICABLE
Findings on Enhancement: NOT APPLICABLE
Findings on Use of Deadly Weapon: TRUE
Date Sentence Imposed: NOVEMBER 7, 2017 Court Costs: $457.50 Fine: $5,000.00
Punishment and Place of Confinement: CT II MURDER: 75 YEARS TEXAS DEPARTMENT OF CRIMINAL JUSTICE
Time Credited: 1244 DAYS Date to Commence: NOVEMBER 7, 2017

This 7th day of November, 2017, this cause was called for trial, and the State appeared by her District Attorney as named above and the Defendant named above, having been duly arraigned, appeared in person, in open court, his counsel also being present, and both parties announced ready for trial; thereupon a jury of good and lawful persons, including the Presiding Juror as named above, and eleven others, was duly selected, impaneled and sworn, according to law; the indictment was read, and the defendant entered his plea of not guilty thereto, and evidence for the State and the Defendant was submitted and concluded, and the Court charged the jury as to the law applicable to said cause, and argument of counsel for the State and the Defendant was duly heard and concluded, and the jury retired in charge of the proper officer to consider of their verdict; and afterward was brought into open court by the proper officer, the Defendant and his counsel being present, and in due form of law returned into open court the verdict indicated above, which was received by the Court and is here now entered upon the minutes of the Court, to-wit: We, the Jury, find the Defendant, **CHIRON SHARROL FRANCIS**, guilty of the felony offense of **CT II MURDER** as charged in the indictment;

and was signed by the Presiding Juror.

Thereupon the same jury was duly impaneled to assess said Defendant's punishment in said cause, and the evidence submitted for the State and for the Defendant was duly heard, and at the conclusion of such evidence, the Court charged the jury with additional written instructions as to the punishment in said cause; thereupon the argument of counsel for the State and the Defendant was duly heard and concluded; and the jury retired in charge of the proper officer to consider of their verdict as to Defendant's punishment; and afterward was brought into open court by the proper officer, the Defendant and his counsel being present, and in due form of law returned into open court the following verdict, which was received by the Court and is here now entered upon the minutes of the Court, to-wit: We, the Jury, having found the Defendant guilty of **CT II MURDER** as charged in the indictment, now assess the punishment of the defendant at confinement in the Institutional Division of the Texas Department of Criminal Justice for a term of **75 YEARS**, and was signed by the Presiding Juror.

It is THEREFORE CONSIDERED AND ADJUDGED by the Court that the Defendant named above is guilty of the offense named above as found by the jury, and that he be punished as found by the Jury, that is by confinement in the Institutional Division of the Texas Department of Criminal Justice for the period indicated above and that the State of Texas do have and recover of the said Defendant all costs in this prosecution, for which execution may issue.

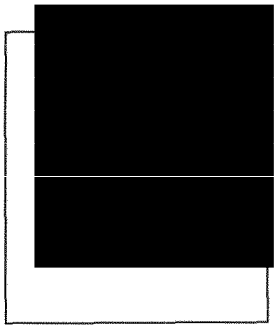
And thereupon the said Defendant was asked by the Court whether he had anything to say why sentence should not be pronounced against him, and he answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of said Defendant, to pronounce sentence against him as follows, to-wit: "It is the order of the Court that the Defendant, named above who has been adjudged to be guilty of the offense indicated above, a felony, and whose punishment has been assessed at confinement in the Institutional Division of the Texas Department of Criminal Justice for the period indicated above, be delivered by the Sheriff of Fort Bend County, Texas, immediately to the Director of the Institutional Division of the State of Texas, or other person legally authorized to receive such convicts, and said Defendant shall be confined in said Institutional Division for the period indicated above, in accordance with the provisions of the law governing the Institutional Division of the Texas Department of Criminal Justice."

The said Defendant was remanded to jail until said Sheriff can obey the directions of this sentence.

Signed and entered this 9 day of November, 2017

JUDGE PRESIDING

DEFENDANT'S RIGHT INDEX FINGER:



FILED
NOV 09 2017
AT 1:45 PM
Annie Rebecca Elliott
Clerk District Court, Fort Bend Co., TX

ATTEST:

District Clerk
Fort Bend County, Texas

By: _____
Deputy

INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

STATEMENT OF FACTS

CAUSE NO.: 14-DCR-066778 -CT II

DEFENDANT'S NAME: CHIRON SHARROL FRANCIS

COURT: 268TH DISTRICT COURT, FORT BEND COUNTY, TEXAS

NATURE OF OFFENSE: **CT II MURDER**

SERIOUSNESS OF OFFENSE:

	YES	NO
PHYSICAL VIOLENCE INVOLVED	XX	
DEADLY WEAPON INVOLVED	XX	
DAMAGE TO PROPERTY INVOLVED	XX	

DEGREE OF FELONY:

XX 1ST ____ 2ND ____ 3RD ___ CAPITAL

PENAL CODE SECTION UNDER WHICH DEFENDANT WAS CONVICTED:
19.02 (b)(1)

NO. 14-DCR-066778
CT II MURDER

THE STATE OF TEXAS	'	IN THE DISTRICT COURT OF
VS.	'	FORT BEND COUNTY, TEXAS
CHIRON SHARROL FRANCIS	'	268TH JUDICIAL DISTRICT

ORDER OF COMMITMENT

On the 7TH day of November, 2017, the above-named defendant was found guilty of the offense of **CT II MURDER** and on the 7TH day of November, 2017, was sentenced to be confined for **75** years in the Texas Department of Criminal Justice, which sentence is hereby incorporated for all reasons.

It is therefore ORDERED, ADJUDGED and DECREED by the Court that the defendant be immediately delivered to the Director of the Texas Department of Criminal Justice of Huntsville, Texas, or such other person legally authorized to receive such person, there to be confined and imprisoned for **75** years , according to the judgment and sentence of this Court and the defendant is hereby remanded into the custody of the Sheriff of Fort Bend County, Texas, where said defendant shall remain until said Sheriff can carry out the order of the Court.

SIGNED this the 9th day of November, 2017.

Judge Presiding

FILED
NOV 09 2017
AT 1:45 P M.
Clerk District Court, Fort Bend Co., TX