

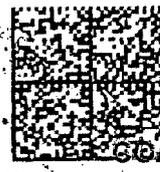
APP.
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OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
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11/20/2025

BURKE, ANDREW CHRISTOPHER Tr. Ct. No. 22-DCR-099866 PD-0700-25

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

Deana Williamson, Clerk

JA

2J-01B

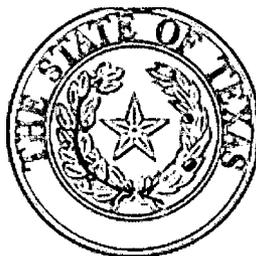
ANDREW CHRISTOPHER BURKE
COFFIELD UNIT - TDC # 2465084
2661 FM 2054 JA
TENNESSEE COLONY, TX 75884

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Justices

KEN WISE
KEVIN JEWELL
RANDY WILSON
BRAD HART
TONYA McLAUGHLIN
CHAD BRIDGES
KATY BOATMAN
MARITZA M. ANTÚ



FILE COPY
Chief Justice

TRACY CHRISTOPHER

Clerk
DEBORAH M. YOUNG, CLERK OF THE
COURT
PHONE 713-274-2800

Fourteenth Court of Appeals

301 Fannin, Suite 245
Houston, Texas 77002

Thursday, September 18, 2025

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RE: Court of Appeals Number: 14-23-00712-CR
Trial Court Case Number: 22-DCR-099866

Style: Andrew Burke v. The State of Texas

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

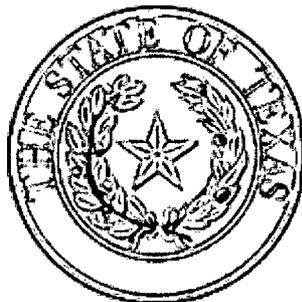
Panel Consists Of Chief Justice Christopher and Justices Jewell and McLaughlin.

Sincerely,

A handwritten signature in cursive script that reads "Deborah M. Young".

Deborah M. Young,
Clerk of the Court

Affirmed and Memorandum Opinion filed August 21, 2025.



In The

Fourteenth Court of Appeals

NO. 14-23-00712-CR

ANDREW BURKE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 458th District Court
Fort Bend County, Texas
Trial Court Cause No. 22-DCR-099866**

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

Appellant Andrew Burke appeals his conviction for solicitation to commit capital murder. In a single issue, he argues that the evidence is legally insufficient to support the jury's guilty finding because the offense was not adequately corroborated absent the solicitee's testimony. After reviewing the record, we hold that the offense is adequately corroborated and that the evidence is sufficient to support the jury's verdict. We affirm.

Background

The State charged appellant with solicitation to commit capital murder for remuneration or the promise of remuneration. *See* Tex. Penal Code § 15.03(a). Appellant pleaded not guilty, and the case was tried to a jury, which heard the following evidence.

The solicitee in this case is Brookes Busch. Busch was a long-time drug user, a former criminal street gang member, and a convicted felon. Busch lived near appellant and eventually began buying drugs from him on a regular basis.

Appellant told Busch that appellant's landlord, Kevin Shah, was going to evict him, and he "needed it taken care of before the court date." Appellant asked Busch to kill Shah. Appellant initially gave Busch a .22 handgun, but Busch returned it because, as a felon, he was prohibited from possessing a firearm. Busch had never met Shah, and appellant gave Busch Shah's address and description. Appellant also paid a "down payment" for the killing by forgiving some money Busch owed appellant. According to Busch, appellant threatened him and his mother if he did not kill Shah.

These events prompted Busch to call Fort Bend County Sheriff's Office Detective Carlos Arredondo and tell him that appellant asked Busch to kill appellant's landlord, Shah, in exchange for money.

Detective Arredondo decided to use Busch as a confidential informant and set up "controlled buys," in which Busch would purchase drugs from appellant while wearing a recording device. The recordings from the controlled buys were introduced at trial, played for the jury, and discussed at length by witnesses.¹

¹ The recordings are not in our record, so all references to their content are based on witness testimony after listening to them.

At the first controlled buy, Busch told appellant, "It's not enough money." Appellant promised Busch that he would get money "after [he] was done." After the first controlled buy, Busch returned the recording device to the detective, gave the detective the purchased drugs, and described the interaction with appellant.

The following day, Detective Arredondo sent Busch to buy drugs from appellant for a second time, again wearing a recording device. At the second controlled buy, appellant gave Busch a gun and made sure Busch "wipe[d] it all down." Appellant "did not want his fingerprints or DNA on it," so he told Busch "to wipe the gun down" in front of him. At the end of the meeting, appellant said, "If you don't, I will be coming for you. If you don't get this done, I will." Busch took this to mean that appellant would kill him if Busch failed to kill Shah. Appellant also promised Busch "more jobs like that" and more money, if Busch successfully killed Shah. Their multiple conversations about killing Shah increased in "intensity and detail." After the second controlled buy, Busch returned from appellant's house with a bag containing a .44 pistol. The gun was loaded with six "hollow point bullets."

Following the controlled buys, police officers took appellant into custody while executing a warranted search of his house. Officers recovered drugs, a magazine for an "AK-47 type weapon," a loaded pistol, and the money Detective Arredondo had given Busch for the buys, which officers confirmed by serial number.

Shah testified. Shah knew appellant because they used to live next door to each other. Appellant needed to find a new place to live, and Shah offered one of his rental properties. A month after appellant, his mother, and his grandmother moved into Shah's rental, the relationship "soured." Once when Shah visited the rental for maintenance work, appellant "rushed to attack [Shah] . . . [and said] he

was going to break [Shah's] neck." After the year-long lease expired, Shah began eviction proceedings. Shah successfully obtained a writ of eviction, but appellant's mother appealed the order. The appeal was set for a court date, which was the "deadline" appellant gave Busch for killing Shah.

Appellant testified as the sole witness in his defense. He claimed that Busch solicited appellant, not the other way around, and appellant "never took him serious." Appellant admitted to being "a low-level drug dealer in the neighborhood." According to appellant, the audio recordings of the two controlled buys were "manipulated." Appellant said he had no animosity toward Shah and thought he was "an alright guy."

The jury found appellant guilty as charged in the indictment and assessed appellant's punishment at life imprisonment in the Texas Department of Criminal Justice—Institutions Division, and a \$10,000 fine. Appellant timely appealed.

Analysis

In a single issue, appellant argues that the evidence is legally insufficient to support the jury's verdict.

A person commits the offense of criminal solicitation if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission. Tex. Penal Code § 15.03(a). Murder for remuneration or the promise of remuneration constitutes capital murder. *Id.* § 19.03(a)(3). A person may not be convicted for criminal solicitation on the uncorroborated testimony of the person allegedly solicited and unless the solicitation is made under circumstances strongly corroborative of both

the solicitation itself and the actor's intent that the other person act on the solicitation. *Id.* § 15.03(b).

In determining whether the evidence is legally sufficient to support a conviction, “we consider all the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt.” *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)); *see also Braughton v. State*, 569 S.W.3d 592, 607-08 (Tex. Crim. App. 2018). We presume that the jury resolved conflicting inferences in favor of the verdict, and we defer to its determination of the evidentiary weight and witness credibility. *See Braughton*, 569 S.W.3d at 608; *Criff v. State*, 438 S.W.3d 134, 136-37 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd). The scope of our review includes all the evidence admitted at trial, whether it was properly or improperly admitted. *See Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We consider both direct and circumstantial evidence, as well as any reasonable inferences that may be drawn from the evidence. *See Balderas v. State*, 517 S.W.3d 756, 766 (Tex. Crim. App. 2016). Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *See Hooper*, 214 S.W.3d at 13.

Appellant argues that Busch's testimony does not reflect a criminal solicitation but instead establishes merely a “solicitation of solicitation.” We disagree. Busch specifically testified that appellant asked him to kill Shah and to do so before the pending court date on appellant's eviction:

Q Okay. What was it that caused you to decide to go talk to law enforcement about Andrew Burke?

A I started getting threats for my mom and me.

Q From your mom?

A For my mom and me.

Q Okay. Threats from who?

A Andrew.

Q Okay. And what were those threats in relation to?

A Whether I was going to kill someone or not.

Q Okay. Had he asked you to kill somebody?

A Yes.

Q Who was it that he asked you to kill?

A His landlord.

Q Did you know who his landlord was?

A No.

Q Had you ever met his landlord?

A Never.

Q Do you remember about when he asked you kill -- to help him kill his landlord?

A I know it was right around the time he was supposed to get evicted.

Q Okay.

A I don't remember the exact date, though.

Q How do you know it was around that time?

A Because that's what he told me.

Q That's what he told you?

A Uh-huh.

Q What do you mean that's what he told you?

A He told me the dude was going to evict him. He needed it taken care of before the court date.

Q Okay. So that was the reason why he wanted you to do it, was because of the eviction?

A Yes, sir.

Further, appellant gave Busch consideration in the form of debt forgiveness and promised to pay Busch more money once he killed Shah. If adequately corroborated, this evidence is legally sufficient to support the jury's guilty verdict. *See, e.g., Richardson v. State*, 700 S.W.2d 591, 594 (Tex. Crim. App. 1985) (affirming solicitation to commit capital murder conviction when defendant solicited his neighbor to kill a witness set to testify against defendant); *see also Johnson v. State*, 650 S.W.2d 784, 787 (Tex. Crim. App. 1983) (rejecting appellant's argument that "attempt to induce another to employ another" was not criminal solicitation but non-criminal solicitation of a solicitation).

Appellant argues that Busch's testimony was not adequately corroborated. The criminal solicitation statute does not allow conviction based solely on the uncorroborated testimony of the person allegedly solicited. *See* Tex. Penal Code § 15.03(b). The circumstances surrounding the solicitation must strongly corroborate the solicitation itself and the actor's intent that the other person act on the solicitation. *Id.*; *Richardson*, 700 S.W.2d at 594. The test used to evaluate corroborating testimony requires us to eliminate from consideration the accomplice testimony and then determine whether there is other incriminating evidence tending to connect the defendant with the crime charged. *Richardson*, 700 S.W.2d at 594. The non-accomplice evidence does not have to directly link appellant to the crime, nor does it alone have to establish appellant's guilt beyond a reasonable doubt; rather, it merely must tend to connect appellant to the offense. *Burks v. State*, 876 S.W.2d 877, 887 (Tex. Crim. App. 1994). Further, although evidence of motive is insufficient in and of itself to corroborate an accomplice's testimony, it may be considered with other evidence to connect the accused with the crime. *Reed v. State*, 744 S.W.2d 112, 127 (Tex. Crim. App. 1988).

Here, appellant was recorded discussing the potential murder with Busch. Appellant instructed Busch to “wipe down” the gun and bullets to be used and threatened to kill Busch if he did not kill Shah. Tape recorded evidence alone may sufficiently corroborate appellant’s intent. *See Casey v. State*, No. 14-04-01165-CR, 2006 WL 348164, at *7 (Tex. App.—Houston [14th Dist.] Feb. 14, 2006, no pet.) (mem. op., not designated for publication) (citing *Ivatury v. State*, 792 S.W.2d 845, 850 (Tex. App.—Dallas 1990, pet. ref’d); *Varvaro v. State*, 772 S.W.2d 140, 143 (Tex. App.—Tyler 1988, pet. ref’d)). Although appellant testified that he was simply “humoring” Busch, the non-solicitee evidence at trial established that appellant agreed with, or did not dispute, Busch’s references to the planned killing. *See Guthrie v. State*, 149 S.W.3d 829, 833 (Tex. App.—Waco 2004, pet. ref’d) (holding tape recording where many of appellant’s statements were affirmative answers to questions was sufficient to corroborate accomplice witness testimony and appellant’s intent to kill).

Appellant also provided Busch with a hand-written description of Shah and Shah’s address. Shah testified that appellant previously had threatened him with bodily harm and that Shah was nearing completion of the proceedings to evict appellant. Even with the elimination of Busch’s testimony, sufficient incriminating evidence remains, which tends to connect appellant with the solicitation and strongly corroborates both the solicitation itself and the seriousness of his intent that Shah be killed.

Appellant testified that he believed the recordings were fake or manipulated, and he denied ever desiring Shah dead or soliciting Busch to kill Shah. In finding appellant guilty, the jury implicitly rejected appellant’s version of events and accepted overwhelming contrary evidence. This finding turns on the jury’s determination of the weight of the evidence and credibility of witnesses. As the

sole judge of credibility, the jury chooses whether or not to believe all or part of any witness's testimony. *Stahmann v. State*, 602 S.W.3d 573, 577 (Tex. Crim. App. 2020); *Thomas v. State*, 444 S.W.3d 4, 8, 10 (Tex. Crim. App. 2014).

Viewing all the evidence in the light most favorable to the verdict, we find a rational trier of fact could have found appellant requested, commanded, or attempted to induce Busch to murder Shah for money. We further conclude, based primarily on the audio recordings that were played to the jury and the testimony of and evidence provided by the non-solicitee witnesses, that the solicitation was sufficiently corroborated. Therefore, the evidence is legally sufficient to find appellant guilty of solicitation of capital murder. *See Richardson*, 700 S.W.2d at 594; *Casey*, 2006 WL 348164, at *8.

Conclusion

We overrule appellant's sole issue and affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Chief Justice Christopher and Justices Jewell and McLaughlin.

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

22-DCR-099866
COGPNC 222
Conviction - Guilty Plea Nolo Contendere
6962064



CAUSE NO.22-DCR-099866

INCIDENT NO. /TRN [REDACTED]

THE STATE OF TEXAS

v.

BURKE, ANDREW CHRISTOPHER
STATE ID NO. [REDACTED]

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IN THE 458TH JUDICIAL DISTRICT COU
of
FORT BEND COUNTY, TEXAS

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: James Shoemake

Date Sentence Imposed: 9/20/2023

Attorney for State: K. Peterson; M. Hanna

Attorney for Defendant: Faden, Cary
and Mike Diaz

Offense for which Defendant Convicted:

Solicitation to Commit CAPITAL MURDER WHILE REMUNERATION

Charging Instrument:

Statute for Offense:

Indictment

19.03 (a)(3)

Date of Offense:

Plea to Offense:

06/13/2022

Not Guilty

Degree of Offense: First Degree Felony

Verdict of Jury: Guilty

Findings on Deadly Weapon: NA

1st Enhancement

Finding on 1st Enhancement

Paragraph: NA

Paragraph: NA

2nd Enhancement

Finding on 2nd

Paragraph: NA

Enhancement Paragraph: NA

Punishment Assessed by:

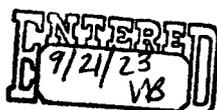
Date Sentence Commences: (Date does not apply to confinement served as a condition of community supervision.)

Jury

9/20/2023

Punishment and Place
of Confinement:

Life in TDCJ-ID



14

**Additional material
from this filing is
available in the
Clerk's Office.**