

NO. 00000

STATE OF TEXAS ) IN THE DISTRICT COURT  
VS. ) 454TH JUDICIAL DISTRICT  
JOE SMITH ) MEDINA COUNTY, TEXAS

**MOTION FOR DISCLOSURE OF  
CORROBORATIVE EVIDENCE TO ACCOMPLICE TESTIMONY**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves the Court to order the State to identify and disclose all evidence it will offer to attempt to corroborate the testimony of any accomplice witness it calls at trial, and for good cause shows the following:

**I.  
The Law**

Texas law on accomplice testimony is clear and long-standing:

A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

TEX. CODE CRIM. PROC. ANN. art. 38.14.

“The rule has been a part of Texas law since at least 1925, and reflects ‘a legislative determination that accomplice testimony implicating another person should be viewed with a measure of caution, because accomplices often have incentives to lie, such as to avoid punishment or shift blame to another person.’” *Zamora v. State*, 411 S.W.3d

504, 509 (Tex. Crim. App. 2013).

“[M]erely proving the commission of the offense is insufficient for corroboration purposes. Furthermore, the testimony of one accomplice witness may not be used to corroborate that of another accomplice witness.” *Moron v. State*, 779 S.W.2d 399, 401 (Tex. Crim. App. 1985)(citations omitted).

In determining the sufficiency of evidence when an accomplice as a matter of law testifies, the court will “eliminate from consideration the accomplice’s testimony . . . and examine the remaining evidence to ascertain whether it independently tends to connect the appellant to the commission of [the crime].” *Jackson v. State*, 745 S.W. 2d 4, 11 (Tex. Crim. App. 1988); *Erwin v. State*, 729 S.W. 2d 709, 711 Tex. Crim. App. 1987). “[I]f there is such evidence, the corroboration is sufficient; otherwise, it is not.” *Streetman v. State*, 698 S.W. 2d 132, 136 (Tex. Crim. App. 1985).

In *Walker v. State*, 615 S.W. 2d 728 (Tex. Crim. App. 1981), the court noted that an accomplice witness is a “discredited witness,” whose testimony is “untrustworthy and . . . should be received and viewed and acted on with caution.” *Id.* at 731. Applying the elimination test, the court found the evidence merely corroborated what the accomplice said and verified extraneous matters, without connecting the defendant to the crime, and placed the accomplice and defendant together near the time of the commission of the offense. The court found this evidence insufficient to corroborate the accomplice. The conviction was reversed and reformed to reflect an acquittal. *Id.* at 732-33; *see also Cruz*

*v. State*, 690 S.W.2d 246, 251 (Tex. Crim. App. 1985)(evidence was insufficient where, after eliminating the accomplice testimony, the court found only “scanty scientific and investigatory evidence, none of which links appellant to the murder”); *accord Munoz v. State*, 853 S.W. 2d 558, 563 (Tex. Crim. App. 1993)(evidence apart from the accomplices was insufficient to connect appellant to the offense).

**II.  
The State’s Pleadings Make It Clear That It Intends  
To Rely On Accomplice Testimony**

In State’s Response To Defendant’s Motion To Dismiss In, the prosecutor identifies Ms. Jones, Ms. Brown, and Ms. Johnson, as “accomplices.” [Exhibit L. p. 11] Indeed, they are accomplices as a matter of law, by virtue of their indictments. *E.g., Burns v. State*, 703 S.W.2d 649, 651-52 (Tex. Crim. App. 1985)(co-indictees for the same offense are accomplices as a matter of law). The State’s pleading goes on to say this:

All three co-defendants to Defendant’s case – Jones, Brown, and Johnson – remain indicted in Bandera County, Texas. They have, through counsel, agreed to testify against Defendant, and they have agreed themselves not to pursue dismissal of their own cases until the resolution of the case against Defendant.

Exhibit L, p. 11]

**III.  
Discovery To Date Reveals No Evidence To Corroborate  
The Potential Accomplice Testimony**

Although the State says that all three of the co-indictees, through counsel, have agreed to testify against Mr. Smith, any inculpatory testimony from two of them would

directly contradict statements they have previously made. Both Ms. Johnson and Ms. Brown have given statements denying their own guilt, and neither accused Mr. Smith of any wrongdoing, and, at least to date, the defense has not seen any different discovery. If there is such evidence, we are clearly entitled to its production under article 39.14(a).

Of course, even if these witnesses have changed their testimonies, they – and Ms. Jones – remain accomplices as a matter of law, and that means their evidence will have to be corroborated. And accomplice witnesses cannot corroborate each other. If there is evidence that would corroborate these witnesses, the defense has not seen it.

#### **IV.**

#### **If The State Has Corroborating Evidence, They Should Disclose It Now; If They Have No Such Evidence, The Indictment Should Be Dismissed**

In order to adequately prepare for trial, the Mr. Smith must be informed of corroborative evidence for any inculpatory testimony given by any accomplice witness. Corroborative evidence, if it exists, is clearly “relevant” in a case depending on accomplice testimony, since without corroboration, there can be no conviction. If the State is in possession of such relevant evidence, they must disclose it under article 39.14(a) of the Texas Code of Criminal Procedure, since it is unquestionably “material to any matter involved in the action.” *See Watkins v. State*, 619 S.W.3d 265, 290 (Tex. Crim. App. 2021)(“‘material’ as it appears in the statute means ‘having a logical connection to a consequential fact’ and is synonymous with ‘relevant’ in light of the context in which it is used in the statute”). If they don’t have the evidence, this

indictment should be dismissed.

Respectfully submitted:

/s/ Mark Stevens

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Attorney for Defendant

### **CERTIFICATE OF SERVICE**

I certify that a copy of defendant's Motion for Disclosure of Corroborative Evidence to Accomplish Testimony has been electronically delivered to the Medina County District Attorney on February 3, 2022.

/s/ Mark Stevens

MARK STEVENS

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**ORDER**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2022, came on to be considered Motion for Disclosure of Corroborative Evidence by Defendant Joe Smith.

After consideration of the motion and argument of counsel, the motion is:

\_\_\_\_\_ (GRANTED and the State is ordered to inform the defense in writing the identity of any accomplice the State intends to call as a witness and to provide a written summary of the non-accomplice testimony or evidence that tends to connect the Defendant to the charged offense. This information is to be provided to the defense on or before the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_ (DENIED, to which ruling the Defendant objects)

SIGNED on \_\_\_\_\_

\_\_\_\_\_  
JUDGE PRESIDING