

NO. 2022CR0000B

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 144TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

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

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves the Court to order the State of Texas 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).

Sample 22

“[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 failed to connect the defendant to the crim. 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.
Co-Defendant's Jones and Scott
Are Accomplices As A Matter Of Law

Like Defendant Smith, Co-Defendants Susan Jones and Rebecca Scott were indicted on June 22, 2023 for intentionally causing the death of Dylan Johnson by cutting and stabbing him with a knife, in the course of committing or attempting to commit robbery in Bexar County, Texas on or about August 14, 2021. The indictments of all three individuals are identically worded, except for the names of the defendants. Each are accomplices as a matter of law to the other. *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).

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

After first telling Detective Martinez on September 7, 2021 that she knew nothing about the theft of a white car, Ms. Jones changed her story to claim that Ms. Scott had stabbed the complainant multiple times, and that Defendant Smith had helped beat him, and then the three of them drove away in his white car. Neither Ms. Scott nor Mr. Smith have made inculpatory statements. The detective's 24-page prosecution guide contains this conclusion on page 23:

There were GPS coordinates stored on SP3's [Smith's] cell phone under device locations. The GPS coordinates showed SP3's device frequented 123 Placeholder Ave.. This was the same location listed on the Texas 30 day permit found on the

dash board of V's recovered Ford Taurus. It is believed SP3 obtained the 30 day permit while at 123 Placeholder Ave. and placed it in the Ford Taurus.

Apart from the claims of Jones, the discredited accomplice witness, and someone who "lies a lot," according to her own grandfather, there is nothing at all in the voluminous discovery provided to date that "independently tends to connect [Joe Smith] to the commission of [the capital murder of the complainant]." *Jackson v. State*, 745 S.W.2d at 11. And that includes the detective's vague, indefinite, and wholly conclusory statements in his prosecution guide about an event at an unknown time, at 123 Placeholder Ave., several miles distant from the crime scene.

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 the State does not have the evidence, this

indictment should be dismissed.

Respectfully submitted:

/s/ Mark Stevens

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CERTIFICATE OF SERVICE

I certify that a copy of defendant's Motion for Discovery of Corroborative Evidence to Accomplice Testimony has been electronically delivered to the Bexar County District Attorney's Office, on the ___ day of November, 2023.

/s/ Mark Stevens

MARK STEVENS

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ORDER

On this the _____ day of _____, 2023, came on to be considered Motion for Discovery of Evidence to Corroborate Accomplice Testimony.

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 _____, 2023.

_____ (DENIED, to which ruling the Defendant objects)

SIGNED on _____

JUDGE PRESIDING