



# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. PD-0992-15

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ANTWAIN MAURICE BURKS, Appellant

v.

THE STATE OF TEXAS

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ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW  
FROM THE FOURTEENTH COURT OF APPEALS  
FORT BEND COUNTY

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**PER CURIAM. RICHARDSON, J., filed a dissenting opinion in which NEWELL, J., joined. ALCALA and WALKER, JJ., dissented.**

## OPINION ON REHEARING

Appellant was convicted of the offense of tampering with physical evidence, to-wit, a human corpse. TEX. PENAL CODE § 37.09(c) & (d)(1). On original submission in this cause, we unanimously upheld the court of appeals' determination that the evidence was legally sufficient to establish the element that the human corpse had been altered. Rather than affirm that court's judgment, however, the majority voted to vacate the judgment and remand the cause for the court of appeals to consider whether the evidence was legally sufficient to

support a different element of the offense, the specific intent to impair the corpse's availability as evidence in a subsequent investigation or official proceeding. TEX. PENAL CODE § 37.09(d)(1). Four judges dissented to this disposition. Those judges argued that, because Appellant never made that particular legal sufficiency argument in his appellate brief, an appellate decision with respect to that issue was not "necessary to final disposition of the appeal." TEX. R. APP. P. 47.1. The four dissenters would simply have affirmed the judgment of the court of appeals.

The State filed a motion for rehearing, which we have granted. The State now echoes the view of the dissenting judges on original submission that to require an intermediate appellate court to resolve aspects of legal sufficiency neither explicitly raised nor even mentioned in the appealing party's brief "creates an unworkable burden on the lower courts to act as *de facto* defense counsel for every defendant who raises the issue of legal insufficiency." State's Motion for Rehearing at 3 (citing dissenting opinions on original submission). On further consideration, a majority of the Court now adopts this view. For the reasons expressed in the dissenting opinions on original submission, we conclude that a remand is unwarranted.

Accordingly, the court of appeals' judgment is affirmed.

DELIVERED: June 28, 2017  
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