



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. PD-0039-19

JOHN CHRISTOPHER FOSTER, Appellant

v.

THE STATE OF TEXAS

**ON STATE'S PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD COURT OF APPEALS
TRAVIS COUNTY**

Per curiam.

O P I N I O N

The State filed a petition for discretionary review, which we granted, asking us to decide (1) whether a defendant is entitled to a self-defense jury instruction when he admits to committing only a lesser-included offense, and (2) whether an appellate court must consider inculpatory evidence and the defense's trial theory when assessing harm.¹

¹The two grounds for review state,

- (1) Is a defendant entitled to a jury instruction on self-defense when he testifies that he did not commit the charged offense and, at most, he admits to committing a separate lesser-included offense?

Having considered the parties' briefs, oral submission argument, and the record, however, we conclude that our decision to grant review was improvident. We therefore dismiss the State's petition for discretionary review as improvidently granted.

Delivered: December 11, 2019
Do Not Publish

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- (2) Does an appellate court correctly apply the standard of review for harm when it fails to consider significant evidence of guilt and the defensive theory put forth at trial, which was that the defendant did not commit the charged offense, not that he committed it in self-defense?