



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

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**NO. PD-1472-12**

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**THE STATE OF TEXAS**

**v.**

**BRANDON CORNELIUS HARRIS, Appellant**

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**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW  
FROM THE TENTH COURT OF APPEALS  
BRAZOS COUNTY**

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*Per curiam.*

**OPINION**

Appellant was charged with murder under Texas Penal Code § 19.02(b)(2). He was found guilty and sentenced to thirty years in prison. On appeal, he argued that the trial court erred in failing to charge the jury on the lesser-included offense of manslaughter. The Court of Appeals disagreed, holding that manslaughter can never be a lesser-included offense of

murder under § 19.02(b)(2). *Harris v. State*, No. 10-11-00035-CR, 2012 Tex. App. LEXIS 5201, at \*8 (Tex. App.—Waco June 27, 2012) (not designated for publication) (citing *Cavazos v. State*, 329 S.W.3d 838 (Tex. App.—El Paso 2010, pet. granted)).

Appellant has filed a petition for discretionary review of this decision, noting that this Court granted review in *Cavazos*. We recently handed down our opinion in *Cavazos v. State*, No. PD-1675-10, 2012 Tex. Crim. App. LEXIS 1387 (Tex. Crim. App. October 31, 2012). In *Cavazos*, we held that manslaughter can be a lesser-included offense of murder under § 19.02(b)(2). *Id.* at \*19.

The Court of Appeals in the instant case did not have the benefit of our opinion in *Cavazos*. Accordingly, we grant Appellant's petition for discretionary review on grounds one and two, vacate the judgment of the Court of Appeals, and remand this case to the Court of Appeals in light of our opinion in *Cavazos*. Ground three of Appellant's petition is refused.

DATE DELIVERED: December 19, 2012  
DO NOT PUBLISH