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**NO. PD- _____**

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

FILED
COURT OF CRIMINAL APPEALS
3/19/2020
DEANA WILLIAMSON, CLERK

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**SANDRA JEAN MELGAR**
**VS.**
**THE STATE OF TEXAS**

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**ON DISCRETIONARY REVIEW FROM THE**
**COURT OF APPEALS FOR THE**
**FOURTEENTH SUPREME JUDICIAL DISTRICT OF TEXAS**
**AT HOUSTON**
**CASE NUMBER 14-17-00932-CR**

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**Appeal from the District Court**
**of Harris County, Texas**
**178TH Judicial District**
**Trial Cause Number 1435566**

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# MOTION TO EXTEND TIME WITHIN WHICH TO FILE PETITION FOR DISCRETIONARY REVIEW AND TO ENLARGE THE WORD LIMIT

TO THE HONORABLE JUDGES OF SAID COURT:

NOW COMES, SANDRA JEAN MELGAR, appellant in the above-styled and numbered cause, and pursuant to Rules 10.5(b) and 68.2(c), Tex. R. App. P., files this Motion to Extend Time Within Which to File Petition for Discretionary Review, and pursuant to Tex. R. App. P. 94(i)(2)(D), to Enlarge the Word Limit, and for cause

would show the Court the following:

I.

Pursuant to the aforementioned rules, the following information is submitted: (1) the case is currently pending in the Court of Appeals, Fourteenth Judicial District, cause number 14-17-00932-CR, after an appeal from a conviction of the offense of murder, in the 178th Judicial District Court of Harris County, Texas, in Cause Number 1435566; (2) on August 24, 2017, the appellant's punishment was assessed by a jury at twenty-seven (27) years confinement in the Institutional Division, Texas Department of Criminal Justice; (3) on January 7, 2020, the Fourteenth Court of Appeals issued an opinion affirming the conviction; (4) on February 20, 2020, the Fourteenth Court of Appeals denied appellant's timely filed Motion for Rehearing En Banc.

II.

The present deadline for filing the Petition for Discretionary Review in the Court of Criminal Appeals is March 23, 2020. *See* Tex. R. App. P. 4.1(a).

III.

Appellant requests an extension of thirty (30) days from the current deadline of March 23, 2020 until April 22, 2020 to file the Appellant's Petition for Discretionary Review. No previous extensions of time have been requested or granted regarding the timely filing of the instant Petition for Discretionary Review.

IV.

In light of the COVID-19 pandemic, the undersigned counsel's legal practice has been adversely impacted and disrupted. Most of counsel's legal research and writing is being conducted at counsel's home and not at his office where much of counsel's files, notes, legal treatises, etc., are located. Interaction with counsel's legal staff has been significantly reduced. On March 16, 2020, the Supreme Court and Texas Court of Criminal Appeals issued *First Emergency Order Regarding the COVID-19 STATE OF DISASTER* which authorizes Courts to modify "any and all deadlines." The undersigned counsel specifically requests that the deadline for filing the Petition for Discretionary Review be extended as well, as set out above.

V.

With respect to the separate request seeking authorization to file an enlarged Petition for Discretionary Review, the record on appeal in this matter is lengthy–over 3,000 pages; the reporter's record consists of approximately 2,112 pages, the clerk's record consists of 920 pages, and, in addition, there are approximately 1,067 exhibits that were admitted into evidence. (There are seventeen (17) volumes of the reporters record.) The trial in this matter lasted nearly three weeks. This was a very weak circumstantial evidence case; the undersigned counsel earnestly believe that the appellate record establishes that the evidence was legally insufficient to prove the

appellant's guilt.

VI.

On January 7, 2020, a panel of the Court of Appeals affirmed the conviction and found the evidence legally sufficient in a 19 page opinion. The panel inaccurately characterized what the trial record actually shows and, in significant part, based its conclusions on an erroneous understanding of the evidence; moreover, evidence critical to a fair resolution of the legal sufficiency calculus was either overlooked or ignored. Countervailing evidence was simply not considered nor evaluated by the panel in its conclusion that the evidence was legally sufficient which contravenes both federal and Texas law. *Jackson v. Virginia,* 443 U.S. 307(1979); and *Brooks v. State,* 323 S.W.3d 893, 899 (Tex. Crim. App. 2010).

The legal analysis undertaken by the panel failed to distinguish permissible "inferences" that can legitimately be drawn from the evidence and "conclusions based on mere speculation or factually unsupported inferences" which are strictly off limits. *Hooper v. State,* 214 S.W.3d 9, 16 (Tex. Crim. App. 2007). This is of particular importance in this case in light of the inept and biased "investigation" conducted by law enforcement which spawned multiple theories concerning the possible meaning of evidence much of which was embraced by the prosecution and ultimately accepted by the jury.

It is respectfully submitted that the panel's ultimate conclusions were reached without any meaningful analysis of the *second* prong of the *Jackson v. Virginia, supra,* legal sufficiency standard which "still requires the reviewing court to determine whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *Brooks v. State,* 323 S.W.3d 893, 902 (Tex. Crim. App. 2010). The appellant and her counsel maintain that the jury's verdict is not rational based on the trial record. We are attempting to address specific factual assertions in the panel's opinion which formed the basis of its conclusions that the evidence was legally sufficient in order to demonstrate that those assertions (and the resulting conclusions) are simply not borne out by the record (or the decisional law), even when the evidence is considered in the light most favorable to the verdict. By definition, the analysis of the opinion and of the lengthy appellate record herein is exceedingly *fact-intensive.* Moreover, a review of the legal sufficiency of the evidence requires a "highly individualized assessment." *Carrizales v. State,* 414 S.W.3d 737, 742 (Tex. Crim. App. 2013).

In light of the Grounds For Review which will be presented in the Petition for Discretionary Review (a minimum of five) and in order to accomplish that assessment and demonstrate the panel's erroneous conclusions, it is respectfully requested that counsel be permitted to file the Petition for Discretionary Review with a word count

in excess of the word limitations imposed by T.R.A.P. 9.4(i)(2)(D), namely, a word count of 9,000 words.

WHEREFORE, PREMISES CONSIDERED, appellant respectfully prays that this motion be granted and that the Court permit an extension of time to file the Petition for Discretionary Review until April 22, 2020. It is further respectfully requested that the word limitation be enlarged to not exceed 9,000 words.

Respectfully submitted,

*/S/ George McCall Secrest, Jr.*

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Attorneys for Appellant,
**SANDRA JEAN MELGAR**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Appellant's Motion to Extend Time Within Which to File Petition for Discretionary Review and to Enlarge the Word Limit Defendant-Appellant Sandra Jean Melgar has been furnished to Mr. Clinton Morgan, morgan_clinton@dao.hctx.net, on this 17th day of March, 2020.

*/S/ George McCall Secrest, Jr.*
**GEORGE McCALL SECREST, JR.**