NUMBER 13-14-00508-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

DAVID VASQUEZ, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 117th District Court of Nueces County, Texas.

O R D E R

Before Justices Benavides, Perkes, and Longoria
Order Per Curiam

This cause is before the Court on appellant's motion to remand to trial court for new trial, the State's response and motion to abate appeal, and appellant's motion for extension of time to file the brief. The reporter's record consisting of four volumes was filed with this Court on October 28, 2014. The reporter has notified this Court that volume 5, consisting of the exhibits, cannot be filed because the exhibits are not in her possession

and cannot be located. Appellant states the lost exhibits were original exhibits and cannot be replaced by agreement. The State has responded that it may be possible to obtain duplicate exhibits, or the exhibits may be located.

Because of the unknown status of the exhibits, we GRANT the State's motion to abate and remand. Appellant's motion for new trial is CARRIED WITH THE CASE. This appeal is ABATED and the matter is REMANDED to the trial court. In accordance with Texas Rule of Appellate Procedure 34.6(f)(4), the trial court is directed to conduct a hearing to determine: (1) if the appellant has timely requested a reporter's record; (2) if, without the appellant's fault, a significant exhibit or a significant portion of the court reporter's notes and records has been lost or destroyed or - if the proceedings were electronically recorded - a significant portion of the recording has been lost or destroyed or is inaudible; (3) if the lost, destroyed, or inaudible portion of the reporter's record, or the lost and destroyed exhibit, is necessary to the appeal's resolution; and (4) if the lost, destroyed, or inaudible portion of the reporter's record cannot be replaced by agreement of the parties, or the lost or destroyed exhibit cannot be replaced either by agreement of the parties or with a copy determined by the trial court to accurately duplicate with reasonable certainty the original exhibit. *See* TEX. R. APP. P. 34.6(f).

The trial court is directed to forward the record of the proceedings, including any orders and findings, to this Court within thirty (30) days of the date of this order, or to notify this Court within such period indicating a date by which the trial court can comply.

Appellant's motion for extension of time to file the brief is GRANTED pending resolution of the matter herein.

It is so ordered.

PER CURIAM

Do not publish.
Tex. R. App. P. 47.2(b).

Delivered and filed the
19th day of December, 2014.