

**No. 14-24-00455-CR**  
**No. 14-24-00456-CR**

IN THE  
  
COURT OF APPEALS  
  
FOR THE FOURTEENTH DISTRICT  
  
OF TEXAS  
  
AT HOUSTON

FILED IN  
14th COURT OF APPEALS  
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DEBORAH M. YOUNG  
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No. 1772346 & 1771241  
In 486TH District Court  
of Harris County, Texas

**JONATHAN ACOSTA**  
*Appellant*

V.

**THE STATE OF TEXAS**  
*Appellee*

**APPELLANT'S BRIEF ON APPEAL**

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## **ORAL ARGUMENT IS NOT REQUESTED**

### **STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to **TEX. R. APP. PROC. 75**, Appellant does not request oral argument in this case.

### **IDENTIFICATION OF THE PARTIES**

In order that the members of this Court may determine disqualification and recusal under the **TEX. R. APP. PROC. 15** and 15a, Appellant certifies that the following is a complete list of the parties, attorneys, and other persons with an interest in the outcome of this lawsuit:

Honorable Aaron Burdette	<i>Presiding Judge in 486th District Court</i>
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Jimmy Ortiz	<i>Defense counsel at trial</i>
Patti Sedita	<i>Defense counsel on appeal</i>

Rebekah Wrobleske	<i>Assistant District Attorney at trial</i>
Allen Curry	<i>Assistant District Attorney on appeal</i>

Jonathan Acosta	<i>Appellant</i>
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## **PRELIMINARY STATEMENT**

Appellant was charged by indictment in two cases with the offenses of aggravated robbery, both alleged to have been committed on May 16, 2022. (CR1:26, CR2:30). On June 7, 2024 the case proceeded to trial by jury. (CR1:275). Appellant elected the jury for assessment of punishment. (CR:32,CR2:32). On June 11, 2024 the jury returned a verdict of guilty. (CR1:297,CR2:148). On June 12, 2024, the jury assessed Appellant's punishment at confinement for thirty (30) years in the Texas Department of Criminal Justice, Institutional Division on each case. (CR1:302CR2:311). Judgment and sentence were signed that same day. (CR1:301;CR2:299). On June 12, 2024, Appellant gave notice of appeal. (CR1:310;CR2:312).

## STATEMENT OF THE FACTS

The State's first witness was Jorge Jauregui, a police officer for the city of Houston (RR3:25). He testified that he took a walk-in report of a vehicle theft in a robbery on May 16 of 2022. (RR3:27). The State's second witness was Roberto Elizondo, one of the complainants, and he told the jury that on May 16, 2022, he was helping a lady distribute tortillas that morning and he had made his first delivery in a van. (RR3:40). He testified that he went to get gas and while at the gas station someone asked him for money. (RR3:41-43). When he came back out, that person approached again and demanded his wallet after showing a handgun in his waistband. (RR3:44). Mr. Elizondo testified that he handed over his wallet based on that threat. The keys to the van were in the ignition and Mr. Elizondo told the jury that the person got in the van and drove it away. (RR3:45).

States next witness was Luis Guevara, a police officer for the Houston Police Department. (RR3:74). He told the jury that around 6:00 AM on May 16, 2022, he was dispatched to a robbery with a Spanish-speaking complainant. (RR3:77). This officer testified that he wrote a report and entered the vehicle in as stolen. This complainant's name was Roberto Blanco-Perez (RR3:82). States next witness was Elizabeth Gemmill, a police officer for the Houston Police Department assigned to the auto crimes task force (RR3:495). On May 17, 2022, she participated in a traffic stop of a stolen vehicle while in an undercover capacity with other uniformed officers (RR3:98). She told the jury the vehicle was a white work van. She was present when Appellant was arrested and identified him in court and testified that Appellant was the driver of the van. (RR3:100).

States next witness was Patrick Kiernan, Houston Police Officer. (RR3:121). He was also present at the traffic stop where Appellant was arrested (RR3:124). He identified his body camera footage from that day. (RR3:125). He told the jury that Appellant was alone in the vehicle (RR3:128). He told the jury that according to records, the vehicle had been stolen the day before and that no weapon it was found inside the van. (RR3:137).

The State's next witness was Sergeant Ruben Barrios with the Houston Police Department in the robbery division. (RR3:140). He told the jury he was assigned to investigate both of these allegations of theft of a vehicle at gunpoint. (RR3:144). He told the jury that he interviewed both witnesses and put together photo arrays containing Appellant's picture. (RR3:145). According to Houston Police Department procedure, another officer presented the photo array to each of the complainants where each complainant picked Appellant out of the photo array. (RR3:149). He admitted to the jury that he failed to follow up on any information provided by Appellant regarding other suspects. (RR3:159).

The State's next witness was Mr. Blanco Perez. (RR4:4). He told the jury that on May 16, 2022 he was doing carpentry work and kept his equipment in his van. (RR4:6). He testified that around 6:00 that morning he went to a water mill to get water for his workers that day. (RR4:9). He testified that he got out of the van and a person approached him. (RR4:10). He identified this person in court as Appellant. (RR4:11). He told the jury that this person came up behind him and pointed a gun at him and he felt the gun on his body. He testified that this person told him to give him the keys or he would kill him so he gave him the keys. (RR4:12).

## **POINT OF ERROR**

### **SOLE POINT OF ERROR**

*The prosecutor engaged in improper jury argument when she argued that Appellant would “ride down the elevator” if not convicted, encouraging the jury to convict for a reason not based on the evidence .*



## ARGUMENT AND AUTHORITIES

### SOLE POINT OF ERROR

*The prosecutor engaged in improper jury argument when she argued that Appellant would “ride down the elevator” if not convicted, encouraging the jury to convict for a reason not based on the evidence .*

Appellant was charged with committing the crimes of aggravated robbery against two complainants on the same morning. The case was based only on eyewitness identification and vigorously challenged by Appellant at trial. The prosecutor committed unobjected to error by arguing for conviction in an impermissible manner and this Court should reverse the conviction and remand for a new trial.

A person commits the offense of aggravated robbery if he (a) A person commits an offense if he commits robbery as defined in Section 29.02, and he:

(1) causes serious bodily injury to another;

(2) uses or exhibits a deadly weapon; or

(3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is:

(A) 65 years of age or older; or

(B) a disabled person.

(b) An offense under this section is a felony of the first degree.

**TEX. PENAL CODE SEC. 29.03.**

Robbery is defined as (a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, he:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another; or
- (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

**TEX. PENAL CODE SEC. 29.02.**

Permissible jury argument falls into one of four areas: (1) summation of the evidence; (2) reasonable deduction from the evidence; (3) an answer to the argument of opposing counsel; or (4) a plea for law enforcement. *Cannady v. State* 11 SW3d 205 (Tex Crim App 2000). Appellate courts should not hesitate to reverse when it appears the State has departed from one of these areas in argument and has engaged in conduct calculated to deny the accused a fair and impartial trial." *Wilson v. State*, 938 SW.2d 57 (Tex. Crim.App 2002). Appellate courts have specifically held that it is improper for a prosecutor to ask members of the jury to place themselves in the shoes of the victim." *Boyington v. State*, 738 S.W.2d 704, 709 (Tex. App.-Houston [1st Dist.] 1985, no pet.) (citing *United States v. Cook*, 592 F.2d 877 (5th Cir. 1979); *Chandler v. State*, 689 S.W.2d 332 (Tex. App.-Fort Worth 1985, no pet.)).

As in *Boyington*, the prosecutor here made an impermissible argument, one not a summation or deduction from the evidence, an answer to a defense argument or a plea for law enforcement. This argument was a clear attempt to make the jurors fear appellant and convict him solely for that reason. While it is true the argument went unobjected to, it can

still form the basis for reversal. In *Boyington*, the First Court of appeals reversed the conviction based on, among other things, similar unobjected to error.

In the case before this Court, the prosecutor argued as follows:

If you find this man not guilty, he's going to walk out those doors. He's going to get on the elevator with you and he's going to go back into our community.

(RR4: 67).

How can this argument be permitted? It is a slippery slope to say to an assistant district attorney that they can get away with this type of inflammatory statement, pushing the line to urge conviction not on factual grounds but on fear alone. This Court should reverse the conviction and remand the case for a new trial.

## CONCLUSION AND PRAYER FOR RELIEF

The State engaged in impermissible jury argument, allowing the jury to convict based on something other than evidence. As such, Appellant prays this Court will reverse the conviction and remand for a new trial.

Respectfully submitted,

*Patti Sedita*

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PATTI SEDITA

State Bar No. 00787484

## CERTIFICATE OF SERVICE

I certify that I delivered a copy of the Appellant's Brief the Harris County District Attorney's Office, Appellate Division at 1201 Franklin, Houston, Texas 77002, on this the 27th day of January, 2025.

*Patti Sedita*

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Patti Sedita

## STATEMENT OF WORD COUNT

I certify that that this brief contains 1813 words according to the Office 365 word counter.

*Patti Sedita*

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Patti Sedita

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