

# IN THE FOURTEENTH COURT OF APPEALS

*for the*

**STATE OF TEXAS**

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14th COURT OF APPEALS  
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**Case No. 14-24-00081-CR**

CHAD EDWARD HULTQUIST

v.

THE STATE OF TEXAS

On Appeal from the  
155th Judicial District Court of Austin County, Texas  
Trial Court Cause No. 2023R-0220

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## APPELLANT'S BRIEF

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**ORAL ARGUMENT REQUESTED**

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## **STATEMENT OF THE CASE**

*Nature of the Case and Parties:*

The Grand Jury of Austin County, Texas, indicted Chad Edward Hultquist (“Hultquist”), Appellant herein, for retaliation. Clerk’s Record (hereinafter “CR”) at 4.

*Trial Court:*

The Honorable Jeff Steinhauser, of the 155th Judicial District Court of Austin County, Texas.

*Trial Court’s Disposition:*

The Jury found Hultquist guilty of retaliation and sentenced him to twenty years confinement in the Institutional Division of the Texas Department of Criminal Justice. CR at 66–67 and 75–76.

## **ISSUE PRESENTED**

1. The State did not present evidence of Hultquist’s retributive intent. Evidence of retributive intent is necessary to a charge of retaliation. Without proof of this element, the Court should reverse.

## **STATEMENT OF FACTS**

On July 5, 2022, a clerk at the Bellville Police Department checked the Department’s voicemails and received a “concerning” message from Hultquist. RR Vol. 3 at 17:5–19:3. According to the clerk, Hultquist had left the message between 6:00 and 6:30 a.m. on either July 4 or July 5, 2022.<sup>1</sup> *Id.* at 21:3–11. The voicemail from Hultquist concerned the clerk because Hultquist threatened two assistant district attorneys (“ADAs”) in the message. *Id.* at 21:17–22. On cross-examination,

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<sup>1</sup> Hereinafter referred to as the “July 5, 2022, voicemail.”

the clerk admitted that in his message, Hultquist was attempting to report that he had been the victim of a crime suffered “at the hands of the DA.” *Id.* at 29:24–30:7.

The clerk notified the Bellville Chief of Police of the concerning voicemail. RR Vol. 3 at 32:15–17; 33:21–34:3. The voicemail concerned the Chief as well because in it, Hultquist sounded as if he was threatening two ADAs: Ben Nystrom and Brandy Robinson. *Id.* at 36:8–16; 37:13–18. After reviewing the voicemail, the Chief contacted the Austin County District Attorney’s Office as well as the Austin County Sheriff’s Department in order to alert them of Hultquist’s threats. *Id.* at 38:7–14.

The Chief also acknowledged that Hultquist’s voicemail reported a crime, specifically that Hultquist had been raped by ADA Nystrom and Michael Jackson. RR Vol. 3 at 47:14–48:15. The Chief said he did not have Hultquist’s allegations of rape investigated because, at least to the Chief, Hultquist had “no credibility.” *Id.* at 48:23–25. The Chief simply did not believe Hultquist despite understanding that “the whole reason Mr. Hultquist called was to report him being raped by Mr. Nystrom.” *Id.* at 51:24–52:2.

Over the previous years, Nystrom had spoken to Hultquist approximately twelve times. RR Vol. 3 at 56:3–14. Nystrom was also made aware of Hultquist’s voicemail of July 5, 2022. *Id.* at 59:12–15. Like the others, the voicemail concerned Nystrom because of the threats Hultquist made against him in the message. *Id.* at

60:1–20. Apparently, Hultquist had previously accused Nystrom of being a drug dealer with the street-name “Indio.” *Id.* at 68:16–23; 71:16–18; 141:4–5. Of course, Nystrom denies everything Hultquist accused him of in the July 5, 2022, voicemail. *Id.* at 78:3–6.

Like Nystrom, assistant district attorney Robinson was familiar with Hultquist before the voicemail of July 5, 2024. RR Vol. at 83:15–25. Robinson had known Hultquist since 2005, shortly after she began working as an assistant district attorney in Austin County. *Id.* Over the years, Robinson had received “[m]any, many letters” from Hultquist at her office. *Id.* at 84:23–85:7. At the same time, Robinson had received phone calls from Hultquist over the years she had been working in Austin County. *Id.* at 85:8–18. Robinson was also made aware of Hultquist’s voicemail of July 5, 2022. RR Vol. at 87:11–15. She was able to listen to the voicemail on the same day, and she was alarmed by the threats Hultquist made against herself and Nystrom. *Id.* at 87:16–88:11.

Robinson also explained that she received two phone calls from Hultquist a couple of days prior on July 3, 2022. *Id.* at 88:3–11. In these calls, Hultquist did not threaten anyone. *Id.* at 88:25–92:3. Instead, Hultquist said that he wanted whoever was with him to take him to Lowe’s so that he could buy a chainsaw on his way to the Brazos River. *Id.* at 91:19–92:3. Despite no threats being made in these calls, Robinson said this phone call concerned her “because it was the first time in years



that he had been planning to come back to Austin County.” *Id.* at 92:11–15. Robinson lived near the river and was afraid that Hultquist had found her address. *Id.* at 93:15–19. Like the Chief, Robinson did not believe the allegations Hultquist made in his July 5, 2022, message that something had been stolen from him or that he had been raped. *Id.* at 110:13–18.

### **SUMMARY OF THE ARGUMENT**

Mere threats against a public official do not amount to the crime of retaliation. When the State pursues a charge of retaliation based on threats, it must prove that the threats were made on account of the public official’s capacity as a public official. Here, particularly as to Nystrom, the State did not demonstrate that the threats contained in Hultquist’s voicemail of July 5, 2022, were because of Nystrom or Robinson’s capacity as public officials. Hultquist alleged that Nystrom raped him, not that Nystrom took some action as an assistant district attorney for which Hultquist sought retribution.

In the end, the failure to prove that Hultquist’s threats arose from Nystrom or Robinson’s capacity as public officials is fatal to the State’s case. Without this proof, the State failed to present any evidence of an essential element of the crime of retaliation, *i.e.*, retributive intent. In a retaliation case based on threats, such as the instant case, the State must prove the harm inflicted resulted from a retributive attack for the duties performed by Nystrom and Robinson. In our case, the State did not

present any evidence of some duty performed by Nystrom or Robinson for which Hultquist sought retribution.

### **STANDARD OF REVIEW**

After the Court of Criminal Appeals' decision in *Brooks v. State*, courts of appeals only review sufficiency of the evidence challenges under the legal sufficiency standard and no longer also under a factual sufficiency standard. *Mayer v. State*, 494 S.W.3d 844, 848 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd) (citing *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010)). A reviewing court examines the legal sufficiency of the evidence by considering “the combined and cumulative force of all admitted evidence and any reasonable inferences therefrom in the light most favorable to the verdict to determine whether a jury was rationally justified in its verdict.” *Kolb v. State*, 523 S.W.3d 211, 214 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd) (internal citations omitted).

“The jury is the sole judge of credibility and weight to be attached to the testimony of witnesses.” *Kolb*, 523 S.W.3d at 214 (internal citations omitted). The reviewing court resolves all reasonable inferences from the evidence in support of the verdict. *Id.* (internal citations omitted). In making this analysis, the reviewing court gives deference to the jury's resolution of conflicts in the evidence unless the resolution is not rational. *Id.* (internal citations omitted). Evidence is legally insufficient, when “(1) the record contains no evidence, or merely a ‘modicum’ of

evidence probative of an element of an offense; or (2) the evidence conclusively establishes a reasonable doubt.” *Ervin v. State*, 331 S.W.3d 49, 55 (Tex. App.—Houston [1st Dist.] 2010, pet. ref’d).

While the reviewing court gives a jury deference in its factual findings under a legal sufficiency standard of review, the jury may not speculate. *Hooper v. State*, 214 S.W.3d 9, 15 (Tex. Crim. App. 2007). An inference is the logical consequence of other facts, but “speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented.” *Id.* at 16. Speculation will not support a finding of fact beyond a reasonable doubt. *Id.*

## **ARGUMENT**

### **ISSUE 1**

**The State did not present evidence of Hultquist’s retributive intent. Evidence of retributive intent is necessary to a charge of retaliation. Without proof of this element, the Court should reverse.**

Hultquist’s threats against Nystrom and Robinson contained in his July 5, 2022 voicemail are not sufficient, without more, to prove the offense of retaliation. In a retaliation prosecution, the State must prove beyond a reasonable doubt that Hultquist had a retributive intent when he made the threats. To prove this retributive intent, the State must also have proven at trial that there was some act or omission by Nystrom or Robinson against which Hultquist sought to retaliate. Additionally,

the State must have additionally demonstrated that Hultquist's threats were retaliatory in nature. In other words, Hultquist's threats must have been because of or on account of Nystrom or Robinson's actions as a public servant. Here, the State failed to prove the requisite retributive intent. Accordingly, the Court must reverse Hultquist's conviction for retaliation.

**A. The offense of retaliation requires proof of retributive intent.**

The State charged Hultquist with retaliation. CR at 4. A person commits the offense of retaliation against a public servant:

- (1) if the person intentionally or knowingly harms or threatens to harm another by an unlawful action;
- (2) in retaliation for or on account of the service of another as a
- (3) public servant.

TEX. PENAL CODE § 36.06(a). A fundamental intent of the retaliation statute is to encourage people to serve as public servants "without fear of retribution." *Doyle v. State*, 661 S.W.2d 726, 729 (Tex. Crim. App. 1983).

Merely proving a defendant knowingly or intentionally threatened someone who is a public servant is insufficient to prove the crime of retaliation. *See In the Matter of M.M.R.*, 932 S.W.2d 112, 115 (Tex. App.—El Paso 1996, no writ) (holding that "proving the actor harmed a public servant while the public servant was lawfully discharging an official duty, without more, fails to establish this

retributory element”); *Riley v. State*, 965 S.W.2d 1, 2 (Tex. App.—Houston [1st Dist.] 1997, pet. denied) (citing *M.M.R.* and concluding that “it is not enough that the State demonstrate a public servant was harmed while lawfully discharging his duties”). The State must prove the harm or threatened harm inflicted resulted from a retributive attack for the duties performed by the public servant. *Riley*, 965 S.W.2d at 2.

**B. The State presented no evidence of Hultquist’s retributive intent.**

Here, the State must have proven at trial that Hultquist’s threats against the two assistant district attorneys were driven by Hultquist’s retributive intent. The State did not meet this burden.

***1. The State did not point to any official act of the two assistant district attorneys that Hultquist was reacting to when he made the threats contained in the July 5, 2022, voicemail.***

Bear in mind, while the two assistant district attorneys had come to know Hultquist from their numerous previous communications with him, the State did not allege—much less prove at trial—that either of them had taken some action against Hultquist which was the subject of his retaliation. To be sure, Hultquist left the voicemail of July 5, 2022, on which the State bases their prosecution. However, the State ***did not present any evidence*** of some act which either assistant district attorney undertook for which Hultquist’s July 5, 2022, voicemail could be characterized as

retaliation against. Without this essential element of the claimed offense, Hultquist must be acquitted.

**2. *The threats Hultquist made against Nystrom and Robinson in the July 5, 2022, voicemail are simply that: threats. The State could not demonstrate that those threats were made in retaliation for any of Nystrom or Robinson’s official acts.***

In the voicemail, Hultquist alleges that on the previous evening (1) Nystrom (along with his accomplice, Michael Jackson) raped him; Nystrom stole his “computer science tool;” and, (3) Nystrom stole his new chainsaw. State's Exh. 2 at 0:22.<sup>2</sup> After asking that this crime be reported to various other federal and state agencies, Hultquist stated that he wanted to kill Nystrom. *Id.* at 0:40. In the remainder of the voicemail, Hultquist simply repeats these allegations and threats several more times. *See id.* Hultquist also warns that Robinson should “watch out too.” *Id.* at 2:10.

Undoubtedly, in the voicemail, Hultquist makes lots of allegations and threats against the two assistant district attorneys; but, nothing contained in the voicemail indicates Hultquist had a retributive intent when he made these allegations and threats. Bear in mind, neither Nystrom nor Robinson had any reason to contact or otherwise deal with Hultquist for “years.” RR Vol. 3 at 92:12–15. Hultquist’s threats

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<sup>2</sup> For the convenience of Court, citations to this audio recording, as well as all other audio/video recordings referenced herein, are made to time stamps displayed in the video playback software rounded to the nearest five seconds proceeding the cited statements.

contained in the voicemail were not made in reaction to some action either Nystrom or Robinson were taking against Hultquist in their capacities as assistant district attorneys. The State did not present evidence that at the time of the July 5, 2022, voicemail that Nystrom and Robinson were pursuing some sort of criminal or other official action against Hultquist that he could intend to retaliate against.

At least one fact is undisputed in this case. Hultquist's threats made in the July 5, 2022, voicemail for which he was indicted resulted from his belief—however misplaced—that Nystrom and Michael Jackson raped him and stole his chainsaw. At trial the State did not present evidence of, and Hultquist did not admit to, some action taken by Nystrom and Robinson in their roles as public officials that Hultquist sought retribution for. Without the requisite retributive intent, Hultquist's threats cannot be the basis for the crime of retribution.

### **CONCLUSION AND PRAYER**

The State's inability to prove that Hultquist's threats arose from Nystrom or Robinson's capacity as public officials is fatal to its case. This kind of evidence is necessary to demonstrate Hultquist's retributive intent, an essential element of the crime of retaliation. The State did not present evidence demonstrating Hultquist's retributive intent. For these reasons, the Court should reverse and render a judgment of acquittal.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Appellant's Brief* has been served to all counsel of record as indicated below on this the 7th day of June, 2024, as follows:

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## **CERTIFICATE OF COMPLIANCE**

The number of words in this Appellant's Brief, excluding those provisions described in Tex. R. App. P. 9.4(i)(1) is 2,188. This figure is provided in reliance on the word count of the computer program used to prepare this document.

/s/ Joshua S. Clover  
Joshua S. Clover

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