APPEAL NUMBER 14-24-00026CR
IN THE FOURTEENTH COURT OF APPEALS
HARRIS COUNTY, TEXAS

CASE NO. 1584279
339th JUDICIAL DISTRICT COURT
HARRIS COUNTY, TEXAS

ELENDER LOUISA ARMOUR	§	**IN THE FOURTEENTH COURT**
	§	
V.	§	**OF APPEALS**
	§	
STATE OF TEXAS	§	**AT HOUSTON**

APPELLANT'S APPEAL

ATTORNEY CLYDE H. WILLIAMS
P.O. BOX 841611
PEARLAND, TEXAS 77584
TELEPHONE NO.: (713) 236-0064
TELECOPIER NO.: (713) 234-6519
STATE BAR NO. 21521100
ATTORNEY FOR APPELLANT

ORAL ARGUMENT REQUESTED

IDENTIFICATION OF THE PARTIES AND COUNSEL

Pursuant to Tex. R. App. Proc. 38.1(a) and 38.3, a complete list of the names of all interested parties is provided below so that the members of this Honorable Court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision of the case.

Appellant: Elender Louisa Armour, Pro Se

Trial Counsel: Adam Muldrow, Standby Counsel

Counsel on Appeal: Clyde H. Williams

Assistant District Attorney/Trial: Brad Morse

Assistant District Attorney: Whitney Workman

Assistant District Attorney/Appellate Division: Jessica Caird

District Attorney of Harris County, Texas: Kim K. Ogg

Trial Judge: Hon. James Anderson

TABLE OF CONTENTS

INDEX OF AUTHORITIES

CASES

STATUTES

TEX. CONST.

U.S. CONST.

STATEMENT OF THE CASE

The Appellant was arrested and charged with Aggravated Assault by threat with a deadly weapon, a firearm, on March 20, 2018, in cause 1584279 out of the 351st District Court of Harris County, Texas. The indictment was filed April 16, 2018, for Aggravated Assault as described above. Trial was conducted on December 5, 2023, by Judge James Anderson over Appellant's pro se objection. The jury found her guilty. The court sentenced the Appellant to five years in the Institutional Division of the Texas Department of Corrections on December 7, 2023.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested to aid the court's decisional process. The law and facts in this case may be understood as well as the subjective perception of the complainant and the Appellant supported by the record. The interaction of the court and the Appellant was not unbiased maybe better understood as well to render a constitutional decision.

ISSUES PRESENTED

I

The Appellant did not waive her right to counsel for the December 5-7 trial. Her written waiver in March had no relevance to her trial. Nor did her written waiver address whether she was competent to stand trial and represent herself because of her entrenched delusions.

II

The court made the repeated negative comments prohibited by Tex. Code of Crim. Proc. 38.05 which demeaned the Appellant and her choice to exercise her constitutional right to self-representation.

III

The jury verdict is not supported by evidence in the record beyond a reasonable doubt. The record of evidence supports Appellant's relevant testimony to the charge. It is documented by her and Travelstead's 9-1-1 calls and timing. The Appellant's willingness to remain at the location, the photo of her cell phone call log and timing of the photo of the back of the complainant's vehicle.

IV

The Appellant's counsel adopts pro se counsel's motions and orders objecting to Judges Anderson and Wilkerson trying her case and requests oral and written to have her case tried in the 339th by Judge Bell.

V

The Appellant's counsel adopts pro se counsel's motions, orders and arguments to set aside the indictment for failure to provide a speedy trial.

STATEMENT OF FACTS

On March 20, 2018, Appellant was involved in a brief transaction with the complainant who suffered from panic attacks, and anxiety. He drove to the home of John Holley and his wife at the time, Elizabeth Holley (now Travelstead). The purpose was to check on Travelstead who had some heart issues. While there, he backed on to their driveway. He was on the phone with his girlfriend and distracted by the conversation. He noticed a dark vehicle with dark tinted windows on the street that drove almost to the edge of the driveway. He thought the driver was going to ask him a question. He motioned for the driver to move on past his vehicle. His girlfriend said she would call him back. He thought he saw the driver reach for a gun and waive it at him. The Appellant did not waive a gun at the complainant. The complainant mistakenly believed the cell phone in the Appellant's hand was a gun. Being confused about the presence of an unexpected vehicle at the Holley's and having been previously informed by them about the ongoing custody conflict and

also knowing about a situation that occurred the previous day where the Appellant appeared at a school function, uninvited. He presumed that the situation could be dangerous and his difficulty with anxiety affected his rational ability to perceive the reality of the situation. The Appellant who was operating under long standing delusions surrounding the Holley's having her biological daughter illegally. She believed her daughter was possibly being moved to another location where she wouldn't be found again. She did not know if her daughter was in the other vehicle at the time. She wanted a picture of the vehicle to have documentation of the license plate. This was in the event her daughter was in the car and was being moved to an unknown location.

SUMMARY OF THE ARGUMENT

1. The Appellant was deprived of her right to counsel and self-representation.
2. The trial court's repeated violations of Article 38.05 and undermined the pro se representation.
3. The evidence was insufficient to support the jury's verdict. The record at trial did not support proof beyond a reasonable doubt that the Appellant was guilty of the offense charged.
4. Appellant counsel is adopting the pro se counsel's pleadings and objections to her case being tried by the Emergency Docket Courts, Judge Wilkerson and Judge Anderson.

5. Appellant counsel is adopting the pro se counsel's pleadings and objections To dismiss the case for failure to hold a speedy trial.

ARGUMENT

ISSUE ONE

APPELLANT'S WAIVER OF COUNSEL WAS NOT MADE INTELLIGENTLY, KNOWINGLY AND VOLUNTARILY

During the almost five-year pretrial delay, the Appellant experienced the criminal courts as ever-changing judges, courts, courtrooms, prosecutors and defense counsels. Nine different judges presided over her court settings. Judge George Powell, Judge Brock Thomas, Judge Mark Ellis, Judge Lori Gray, Judge Mike Wilkerson, Judge Denise Collins, Judge James Anderson, and Judge Tevia Bell. Judge James Anderson presided over the jury trial and sentencing. Six different defense attorneys represented the Appellant including Jacquelin Carpenter, Brett Podolsky, Patricia Sedita, David Rushing, Stacy Biggar and standby counsel, Adam Muldrow. Judge Anderson was assigned as the trial judge 45 minutes before the voir dire. All the changes were not helpful to the Appellant who suffered with paranoid conspiracy delusions that related directly to the state's witnesses. The Appellant had little or no trust in her lawyers, judges, state officials, John Holley, the biological father of her daughter and anyone associated with him.

The Appellant was not examined for competency to stand trial and/or to proceed pro se near the time of for her jury trial on December 5, 2023, and her court

sentencing on December 7, 2023. The U.S. Const. Amend.VI, 14, Faretta v. California 442 U.S. 806, 818 (1975), the Texas Const. Art. 1, Sec. 3, 3a, 15 and Tex. Code of Crim. Pro. Art.1.051 require that such a waiver of constitutional rights of this magnitude shall be made intelligently, knowingly, and voluntarily. Such a waiver was not made as required. The court that was assigned to this case for the first time had 45-minutes to acquaint himself with the facts of the case, the applicable law, and the Appellant. The Appellant's bouts with ongoing mental illness during the 5-year pretrial delay of which she spent 489 days in custody. The Appellant's trial involved a long standing in and out of court custody conflict over her biological daughter. She believed there was a conspiracy where her daughter was being hidden and withheld from her. An incident mistakenly reported as an aggravated assault on March 20, 2018, was due to the long-standing custody conflict and the Appellant's delusions that Alice was being held illegally by John Holley and his family.

The primary barrier for the Appellant's competency to proceed pro se was the presence of intrenched conspiracy delusions dealing with the loss of custody and all contact with her daughter, Alice Armour. The delusions included all state's testifying witnesses Josh Bunyard and the law enforcement officers, the court, and the prosecutors. The court did not comply with the basic constitutional requirements of the 5th, 6th and 14th Amendments of the U.S. Constitution, Texas Constitution, Art. 1, Sec. 3, 3a, 15 for the Appellant to waive counsel. All participants in the trial testified

for the state, were co-conspirators aiding John Holley to keep Alice from the Appellant. Her defense to the aggravated assault by threat with a deadly weapon was viable defense and could have reasonably prevailed with a competent defense counsel. The existing delusions distorted the Appellant's memories, perceptions, emotions and understanding. The Appellant's attention and focus during the trial was on proving that there was a conspiracy and that the state's witnesses were co-conspirators. She unfortunately represented herself focusing strongly on the conspiracy elements that were not relevant nor needed to the detriment of putting forward to the jury the facts surrounding the very limited encounter with the complainant waving her phone at him.

The court failed to meaningfully examine the competency of the Appellant to proceed pro se. The facts and circumstances of this case mandated a full competency evaluation before the actual time of trial. Instead, the court relied on an evaluation done one year and nine months before the trial.

The generic form waiver of counsel executed by the Appellant on March 1, 2022, failed to meet the constitutional or statutory requirements above. The form waiver has no use or significance to the Appellant's state of mind or competency to stand trial on December 5, 2023. The pretrial delay was one year and nine months. The Appellant's latest bout of mental illness occurred on February 7, 2023, before her trial. The prosecutor filed another motion for a competency exam. The court

ordered the exam which the Appellant objected to taking. There is no record that the exam was administered. The latest identification regarding mental illness was on a Tex. Code of Crim. Proc.16.22 form on December 6, 2023. The Appellant's trial defense was centered on the content of her Holley delusions regarding the illegal custody and past issues with the Holley's. She was waiving her cell phone for the complainant to move his vehicle onto the street so she could take a cell phone photograph of his license plate number.

PSYCHOLOGIST, GERALD HARRIS PH.D. FINDINGS

Judge Powell signed the order approving Brett Podolsky's Motion for the Appellant to be evaluated and psychologically tested for competency to stand trial on March 25, 2019 (1 C.R. 38). On April 18, 2019, Gerald Harris Ph.D. met with the Appellant for three hours in the Harris County Jail. He concluded in his report that the Appellant was in an acute episode, 297.1 (F22) of a Delusional Disorder, Grandiose Type, Multiple Episodes. The Appellant does not appear to have the capacity to assist properly in her own defense. Harris' psychological report on the Appellant's competency can be found in whole in the (C.R. 42-51). The assessment results in the report are noted below:

1. Intellectual functioning tested low average range.

2. As to legal competence, the Appellant, was unable to focus on most questions and became agitated and would rather focus on her case. The Appellant understands the adversarial nature of court proceedings, the role of participants and the trial process.

3. The Appellant is not malingering or feigning serious mental illness.

4. Diagnosis is Delusional Disorder, Grandiose Type, Multiple Episodes, currently in acute episode, 297.1 (F 22) evidenced by:

A. One or more delusions with a duration of 1 month or longer.

B. No prior diagnosis of Schizophrenia.

C. The disorder is not attributable to the physiological effects of a substance or another medical condition.

Harris' identified specific areas where Appellant has a lack of capacity needed for competency to stand trial in court due to the delusional disorder: The Appellant's understanding of the facts of her case is skewed by her feelings about her ex, the father of her daughter, Alice Armour, now Natalie Lynn Holley. See judgement of the 410th District Court of Montgomery County, Cause number 18-03-03763, executed February 25, 2019, terminating the Appellant's parental rights, adoption by Elizabeth Holley (now Travelstead). (1 DX) (6 R.R. 41-45). The judgement avers that Appellant was cited and did not appear (6 DX 41). The judgement does not contain any rights to visitation or custody for the Appellant. Contrary to

Travelstead's testimony, the judgement terminated all of the Appellant's rights (6 DX 1).

1. The Appellant doesn't trust attorneys including Mr. Podolsky and the other four before his representation. She believes most attorneys are involved in a conspiracy with her ex to keep her away from her daughter.

2.Due to the Appellant's delusions, she believes there is no way she can receive a fair trial.

3.The Appellant has the capacity to identify witnesses but has skewed perspectives as to who is on her side.

4.Due to the Appellant's mental illness, she is unable to relate properly to her attorney.

5. The Appellant does not have the ability to make a rational decision after receiving advice.

6.The Appellant does not have the capacity to cooperate with counsel in planning and executing a legal strategy.

7.The Appellant may have the capacity to identify errors in testimony.

8.The Appellant is likely unable to consult with counsel to challenge witnesses.

9. The Appellant has difficulty answering simple and direct questions due to her mistrust of others and faulty thought processes.

10.The Appellant presents as an emotionally volatile individual. Appellant may have difficulty tolerating stress at trial and while awaiting trial without a prior medication consultation.

11.The Appellant can disclose pertinent facts on her case, but many appear to be inaccurate due to her mental illness.

12.Because of the Appellant's mental illness, she does not have the capacity to protect herself and use the legal safe-guards available to her (C.R. 48-50).

Harris recommended that the Appellant be sent for a period of 90 to 120 days and that competency restoration include a psychiatric medication consult. Once delusional disorders were thought to be untreatable, but he suggests that first and second-generation antipsychotic medications such as Risperdal potentially could remediate her delusions (1 C.R. 50). On May 22, 2019, the court found the Appellant incompetent to stand trial and was transferred from the 351st District Court to the 339th District Court because of incompetency (C.R. 41). The findings in Harris's Competency Report are based on his clinical interview with the Appellant, collateral interview with her mother, Ms. Sharren Willich, his personal observations, mental status exam, three different psychological testing instruments, and written documentation including the motion for the evaluation of competency, the indictment, and the offense reports from Humble I.S.D. Police Department and Harris County Law Enforcement.

AUGUST 2019 STABILIZATION IN HARRIS COUNTY JAIL

The Appellant's mental health stabilized in the Harris County Jail. On August 27, 2019, Ashley Sutton, Ed.D., LPC-S, NCC of The Harris Center for Mental Health and IDD Adult Forensic Unit notified Judge Ellis by letter that the Appellant had stabilized, and the Appellant was number 56 on the transfer list to Vernon. Sutton requested that the Appellant, be re-evaluated for competency based on her stabilization and improvement while in the Adult Forensic Unit of the Harris County Jail at 1200 Baker St., Houston, Texas 77002. (C.R. 54). On October 15, 2019, instead of following Sutton's recommendation, for revaluation, Judge Ellis did not withdraw his order for confinement in Vernon. The Appellant was sent to the Vernon Campus of North Texas State Hospital with an expiration date of February 12, 2020. The letter by Sutton above in Appellant's best interest to avoid any unnecessary confinement or hospitalization when she had likely become competent.

IN VERNON STATE HOSPITAL FACILITY

On admission to the Vernon facility, the Appellant was placed in the Maximum-Security Unit as her delusions had become active again after a two month wait in Harris County Jail to enter Vernon. The Appellant was not on any psychotropic medications on entry to Vernon from Harris County jail. Interviewers described the Appellant on the first day as disheveled in appearance, and behavior, described as oppositional, confrontational, and uncooperative. The Appellant was preoccupied by delusional thoughts [fixed false beliefs despite evidence to the

contrary, difficult to redirect and engage] and eye contact intense and unbroken. Her speech was pressured with increased rate and volume, sometimes rapid fire in a passionate and strident monologue. Her mood was in a mental state of disturbance, irritable, confrontational, and exasperated. The Appellant reports depression, situational anxiety/apprehension related to her current situation and hospitalization. Here effect was labile with rapid shifts in her emotional expression congruent to her mood and intensity. The Appellant appears angry, agitated, pugnacious and restless. The Appellant's thought processes were organized, tangential, racing thoughts which interfere with a person's focus of attention and are difficult to control and usually associated with mood or anxiety disorders. Her delusional beliefs are entrenched and unwavering despite all evidence to the contrary.

Dr. Francis Stodolink, PMHMP-BC, conducted the Appellant's psychiatric exam on October 16, 2019. The Appellant exhibited persecutory delusional thought content (i.e., fixed false beliefs despite evidence to the contrary that others are conspiring against or attempting to harm her). He noted historical memory appears to be convoluted, paranoid, skewed due to paranoid delusions. Specifically, Appellant believes her former romantic partner, law enforcement, the judicial system, and state government have conspired to deny her access to custody of her daughter. The former romantic partner of that the Appellant is focused on is John Holley, the biological father of the Appellant's daughter.

The Appellant was noted as "awake, alert, [and] fully oriented" to person, place, time and situation. Her immediate and recent memory were "undermined" because the Appellant "refused participation in this portion of the evaluation." Regarding her remote memory, Stodolink noted "historical memory appears to be convoluted, skewed due to delusional, paranoid [i.e., a thought process heavily influenced by anxiety or fear, often to the point of irrationality and delusion thinking."] Stodolink noted the Appellant's "focus/concentration intense, but only within those parameters dictated by delusional thinking." Her ability to abstract was noted as "undetermined," as the Appellant "refused participation in this portion of the evaluation." Stodolink noted the Appellant's judgment and insight were "very poor, based on current circumstances, past behaviors." The Appellant's intellectual functioning was grossly estimated to fall within the average range (mental status admission dated October 15, 2019, psychiatric evaluation dated October 16, 2019).

Judge Ellis signed an order for a psychiatric examination of the Appellant for sanity on February 14, 2020. The Appellant's Competency Restoration hearing was reset multiple times from February 14, 2021, until March 1, 2022. From voir dire to the conclusion of the sentencing, the Appellant's cross examination, direct examination, and her testimony was focused on her long-standing, entrenched delusions.

The Appellant progressed at Vernon and received their highest patient privileges. She scored high on her legal understanding of competence to stand trial and being able to aid her counsel. Her treatment providers were assured that she could work with her legal counsel. As soon as she was declared competent she requested to represent herself. The recommendation from Vernon like that of Harris was that the Appellant be tried expeditiously. She had a relapse in her mental health from the date of November 2, 2021. The court ordered another competency examination. On February 1, 2022, her then attorney, Rushing, texted her that she came back competent. (See Appellant's Motion To Set Aside Information For Failure To Afford Constitutional Right To A Speedy Trial (line 25-26) (C.R. 125, 138-141). On January 31, 2022, the Appellant had a Zoom psychological evaluation (C.R.125). Another Tex. Code of Crim. Proc.Art.16.22 was filed February 21, 2023. There is no record of the results of this Zoom psychological evaluation for competency in the Clerk's Record or Reporter's Record. A motion for another competency examination was filed February 7, 2023. The order was granted by the court on that same date (C.R. 96-98). No record is found in the Reporter's Records or the Clerk's Records of the results of this competency examination.

Following her jury trial and sentencing, a Mental Competency Restoration Hearing was requested on docket entry for December 7, as occurring on December 12, 2023. There is no docket entry for the 339th Court in the date column for

December 12, 2023, for the 337 District Court of Harris County on the docket sheet order of Restoration of Competency. Judge Grey and the Appellant signed a form entitled Faretta Warnings, Waiver of Court Appointed Counsel, Court Findings and Order Allowing Defendant to Proceed pro se on March 1, 2022. The form does not contain any specific facts as to what, who, when, and how the warnings were communicated to the Applicant. There is no evidence of the court's specific explanations or Appellant's questions or her understanding of the elements of the offense charged, the penalty range, her options on sentencing from the court or the jury, her eligibility for probation from the jury but not from the judge and that on conviction from pro se representation there can be any claim on ineffective assistance of counsel.

Nor was any evidence in the record that the Appellant understood that she had entrenched delusion/s, but she could focus on her defense that she had her cell phone in her hand. She did not waive a gun at the complainant for him to leave. She waived her phone at him. There was nothing in the record as to any discussion about how her mental health could affect her abilities in exercising her right of self-representation at trial. (See Harris findings 1-13, pages 3 and 4 of this brief) and verbatim at (R.R. 48-50) and Vernon findings, Stodolink, pages 8 and 9 of this brief and (C.R. 42-51).

TRIAL COURT'S FAILURE TO RECOGNIZE THE NEED FOR A PSYCHOLOGICAL EXAMINATION TO DETERMINE APPELLANT'S COMPETENCY TO STAND TRIAL AND PRO SE

The complainant, Joshua Banyard, was the boyfriend of Elizabeth Holley's niece at the time in question. Now Elizabeth Travelstead, is the adoptive mother of the Appellant's biological daughter, Alice, renamed Natalie Holley. Natalie was the subject of a four-year custody conflict between the Holley's and the Appellant. During the five-year pre-trial period, the Appellant spent time on bond and in custody for 489 days.

During the guilt/innocence and sentencing stage of the trial, the Appellant demonstrated that she was operating under the same previously diagnosed delusions of a John Holley conspiracy. The purpose of the criminal prosecution was another method to keep her from any contact with her daughter. In her delusional thoughts, John Holley is the main person perpetuating the conspiracy. His former wife and state's witness, Elizabeth formerly Holley, now Elizabeth Travelstead, adopted Alice. They had Alice's name legally changed to Natalie Holley. The Appellant's belief is that Mr. Holley, his family, the Appellant's defense lawyers, the police and the criminal justice system and state government officials area participants in the conspiracy to deny and prevent her from any contact with her daughter and in her delusions John Holley is the main person perpetuating formerly Elizabeth Holley to adopted the sole purpose of the ongoing family and criminal actions was to prevent

the Appellant from any opportunity to have custody, access and contact with her daughter. John Holley, the biological father of her daughter, is the main beneficiary of the conspiracy by gaining custody. His parents, her lawyers, the police and the criminal justice system, including prosecutors, judges and the state government are preventing her having any contact or access to her daughter. The delusional beliefs were seen at (C.R. 47).

From March 2, 2020, to December 5, 2023, the Appellant had a one year and nine month waiting period for a jury trial. The length of this wait was counter to Dr. Harris and Vernon's recommendations to try her case expeditiously to ensure her competency.

STANDBY COUNSEL

> THE COURT: "She is proceeding pro se against the court's best admonishment. Ms. Armour had a Faretta hearing well before this date where she was advised of the benefits of counsel and the dangers of not having counsel. She has repeatedly insisted upon pro se status over the court's admonishments. And, lo and behold, in the door walks standby counsel, Adam Muldrow. Muldrow is here exclusively at my request, not at Ms. Armour's request. Let's take a short break here so I can introduce them to each other off the record."

THE COURT: Discussion off the record, (2 R.R. 3). Standby counsel met the Appellant 20 minutes before voir dire for the first time. “To her right, my amicus curiae, my friend of the court, Mr. Adam Muldrow.” Mr. Muldrow: MULDROW: “Good morning.”

THE COURT: “I literally recruited Adam 20 minutes ago to come help us down here” (2 R.R. 10-11). This situation allowed no opportunity for any kind of meaningful legal assistance.

SENTENCING

THE COURT: The Appellant was convicted last night at 5:30 p.m. of aggravated assault with a deadly weapon by a jury. We're at the court sentencing phase right now. There are no enhancements.

THE DEFENDANT: Do I have to be present for this? Can't you just do what you want and let me -- I'm going to have a stroke. Do you understand?

THE COURT: I do. Take a deep breath.

THE DEFENDANT: I'm serious.

THE COURT: Take a deep breath.

THE DEFENDANT: It's been going up even when I take deep breaths. I have a headache, blurred vision, and chest pain right now. I almost passed out. My blood pressure went 360 over 150. Ask them. They got me from medical.

THE COURT: Take a deep breath. You'll be fine. You know, for what it's worth

THE DEFENDANT: I don't care. I don't want to be here for it. Can I not waive my presence?

THE COURT: I don't really need to hear from him, for what it's worth.

MR. MORSE: Okay. Your Honor, could I request a very quick recess to go talk to Mr. Holley to see how he feels? In the event we don't call him, would we just proceed on argument?

THE COURT: Briefly, yes.

MORSE: Thank you, Judge.

THE COURT: See you when you get back. Everything's fine.

THE DEFENDANT: I don't -- I don't want to be present. I'm in pain. I cannot see straight. It's not helping my hearing. It's not going to help me even being here. I can't function. I was in the medical. They were fixing to give me medicine when they dragged me out of there. You'd rather me sit here and have a stroke?

THE COURT: I rather you sit back and be patient about it, just --

THE DEFENDANT: It's not going to help. I need ice packs on my face or I need to go get medicine.

THE COURT: Sit back.

THE DEFENDANT: That's not going to help. Done enough. I don't care. Do whatever you want with me. I don't care. It's already ruined my life. It's not worth going back to. Just let me out of here. Send me -- sentence to me whatever you want.

THE COURT: All right. Sit down, Ms. Armour.

THE DEFENDANT: I'm going to pass out.

THE COURT: Sit down. You don't want to pass out standing up. All right, folks. We're back on the record at 9:10 p.m. [sic]. State, do you wish to call any witnesses in this matter?

MORSE: Yes, Your Honor. I just spoke to Mr. Holley. In light of your comments that you don't need to hear from him, we are okay with proceeding only on argument.

THE COURT: Got it. Ms. Armour, do you wish to call any witnesses --

THE DEFENDANT: No. The response was no.

THE COURT: -- on behalf of the defense? State, your right to open and/or close a statement of sentencing as you see fit.

THE DEFENDANT: Yes. Good. Are we done?

THE COURT: No, we're not done.

THE DEFENDANT: I'm going to die before you get to it. Chest pain, headache, blurred vision.

MR. MORSE: State reserves the right to close but waives the right to open.

THE COURT: Ms. Armour, do you have anything to say on your behalf on this sentencing process, Ms. Armour?

THE DEFENDANT: I have something to say.

THE COURT: Say it.

DEFENSE CLOSING STATEMENT

THE DEFENDANT: The jury was wrong because they weren't allowed to see all the evidence. And I could swear an oath on a Bible, my dead daddy, or anything else, I would never have pointed a gun at a total stranger. It doesn't even make sense. My daughter could have been around that car. I would not have had hard feelings towards Mr. Bunyard, ever. I don't today. Today, I don't have hard feelings against John Holley. It's unfortunate he loves his daughter so much. It doesn't mean I'm going to protect him. Tell the truth. And I'm going to take whatever cross I get to bear, but I'm going to stand on that truth. I didn't point a weapon at anybody, and I've only wanted good intentions. I've only wanted justice. And the fact that my 9-1-1 call couldn't be found leads me to believe there's a prosecutorial misconduct. I don't investigate the witnesses that are mentioned in the other 9-1-1 call, you know. And all the other lovely little things. His little -- his little Motion in Limine after he berated me for an hour and a half about me choosing to represent myself. And

after I assured the jury I would let them know why. He filed that thing to keep me from talking about anything that could have made him look bad, to cover his ass.

THE COURT: All set?

THE DEFENDANT: Yep.

THE COURT: Good. State, anything to add on closing.

THE DEFENDANT: See you later.

MR. MORSE; Your Honor, somebody with delusions this

deep, these delusions do not just go away.

THE DEFENDANT: Delusions?

MORSE: She still believes that John Holley has kidnapped her daughter and is illegally keeping her from him.

THE DEFENDANT: And he still believes --

THE BAILIFF: Ma'am, sit down.

THE COURT: You've had your day.

MORSE: She was provided with a fair trial in open court and was judged by a jury of her peers and she still cannot accept the outcome. She is still today saying that the jury is wrong.

THE DEFENDANT: Do you --

THE BAILIFF: Ma'am, quiet.

MORSE: We went over some of the prior bad acts that the defendant had committed during our case-in-chief. You heard about what happened on March the 19th, the day before this assault. You heard about the terror that she's inflicted upon this family. Your Honor, nothing in the defendant's behavior during this trial, nor now, shows that she's going to get better. To protect our community, to protect this family, protect the citizens of the State of Texas, this sentence must be a significant amount of time. The defendant has shown absolutely no remorse whatsoever for her actions on March 20, 2018, and in fact, continues to deny. She's accusing the state of prosecutorial misconduct when the state had gone out of its way to accommodate her when it comes to giving discovery, when it comes to talking about plea offers. Nothing the defendant has done is mitigating. And every action she has taken since the day this case was charged is, in fact, aggravating. These delusions will not end. To protect the citizens of our state, Your Honor, this has to be a significant amount of time.

The sentencing portion of the trial continued although the Appellant informed the Court that she was ill and thought she was going to have a stroke because she had blurred vision and chest pain. The deputies brought her from medical where she was to receive medication for a headache, blurred vision and chest pain. The court ordered her to take a deep breath. She asked to waive her presence. She did not

want to hear from John Holley when she learned he might be the state's first witness. She told the court she was going to die "before you get to it."

When the Court asked her if she had anything to say on her behalf, she gave a closing argument. The defendant testified that she would never have pointed a gun at a total stranger and that she had no hard feelings against the complainant. The state's closing argument (5 R.R. 8-9) asked for a significant amount of time. The state's first comment in closing was somebody with delusions this deep, the delusions do not go away. She still believes that John Holley kidnapped her daughter and is illegally keeping her away from the Appellant (5 R.R. 8).

The Appellant believed there was prosecutorial misconduct because her 9-1-1 call could not be found. DX 3 her photograph was offered, but not admitted which includes one emergency call (9-1-1) on March 20 at 7:32 P.M. There is no year/date on DX 3 (Call Logs 24) offered (5 R.R. 185) not admitted. However, she testified to the predicate necessary and admissibility was denied.

COMPETENCY FOR SELF-REPRESENTATION?

In Blankenship v. State, 673 S.W.2d 578 (Tex. Crim. App. 1984), the responsibility of the court was the Appellant's competency to determine competency to exercise one's right to self-representation. The following legal analysis in the Blankenship case details much of that responsibility.

The U.S. Supreme Court in Faretta v. California, 442 U.S. 806, 818, 95 S.Ct. 2525, 2533, 45 L.Ed.2d 562 (1975) found in the Sixth Amendment an independent constitutional right of an accused to conduct his own defense and held that the right to self-representation does not arise from one's power to waive assistance of counsel.

Faretta, supra 422 U.S. at 833, 95 S.Ct. at 2540. In order to competently and intelligently choose self-representation, the defendant should be made aware of the dangers and disadvantages of self-representation so that the record will establish that "he knows what he is doing and his choice is made with eyes open." Faretta, supra at 835, 95 S.Ct. at 2541, citing Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938) and McCann, 317 U.S. 269, 279, 63 S.Ct. 236, 241, 87 L.Ed. 269 (1942). While Faretta does not mandate an inquiry concerning appellant's age, education, background or previous mental health history in every instance where an accused expresses a desire to represent himself, Martin v. State, 630 S.W.2d 952, 954 (Tex. Crim. App. 1982), the record must contain proper admonishments concerning pro se representation and any necessary inquiries of the defendant so that the trial court may make "an assessment of his knowing exercise of the right to defend himself." Faretta, supra, 422 U.S. at 836, 95 S.Ct. at 2541.

“In honoring such requests. [for self-representation] however, the courts are duty bound to examine defendants assiduously as to their knowledge and intent, ever cautious to ensure that the election is not merely the hollow incantation of a legal

formula, but a purposeful informed decision to proceed pro se." Faretta does not authorize trial judges across this state to sit idly by doling out enough legal rope for defendants to participate in impending courtroom suicide; rather, judges must take an active role in assessing the defendant's waiver of counsel.

"A judge must investigate as long and as thoroughly as the circumstances of the case before him demand. The fact that an accused may tell him that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility. To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments, thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which a plea is tendered." Von Moltke v. Gillies, 332 U.S. 708, 723, 68 S.Ct. 316, 323, 92 L.Ed. 309 (1948).

Despite the trial judge's benevolent intentions in Blankenship, supra, the denial of appellant's right to self-representation under the facts of that case constituted reversible error. The judgments of the trial court and the Court of Appeals are reversed and cause is remanded to the trial court.

TRIAL

The trial court failed to have a psychological examination of the Appellant in accordance with Farretta, Blankenship, Martin, supra. The key issues were whether the Appellate was competent to stand trial and whether she was competent could represent herself without the interference of the damaging delusions of her mental illness. While this seems an obvious duty of the trial judge opted to move into a frank discussion of how delusions could affect her trial. Most of the Appellant's efforts in trial were to establish the illegality of the John Holley conspiracy which detracted from her defense.

EVIDENCE

The Appellant denied commission of the aggravated assault. The complainant's credibility was compromised by his emotional difficulty with his long-standing anxiety and exaggerated feelings of fear and poor eyesight (4 R.R. 93, 94, 96). He quickly departed and feared for his life. Travelstead's sister requested him to check on Travelstead by her sister because of not hearing from her all day and her heart problems. He was talking to his girlfriend on the phone. He backed into the Holley's driveway. The Appellant's car pulled up close to the outer edge of the driveway and stopped on the street. He was confused. He thought she was going to ask questions. He could not identify the Appellant from the witness stand to the counsel table. He could saw a woman in the car's front seat and noticed she was waving a gun at him. She was speaking through the windshield. Not sure but he

thought she was saying get the hell out of here. On cross he testified that the Appellant was “signaling him” instead of

ISSUE TWO

INAPPROPRIATE JUDICIAL COMMENTS VIOLATED

TEXAS CODE OF CRIMINAL PROCEDURE 38.05

> THE COURT: She is proceeding pro se against the court's best admonishment. Appellant has had a Faretta hearing well before this date where she was advised of the benefits of counsel and the dangers of not having counsel. She has repeatedly insisted upon pro se status over the Court's admonishments. And, lo and behold, in the door walks standby counsel, Mr. Adam Muldrow. Muldrow is here exclusively at my request, not at Appellant’s request. Let's take a short break here so I can introduce them to each other off the record. (2 R.R. 3).

The Court asked Muldow would he be a friend of the court and sit with the Appellant. He does not represent her. He’s only to answer specific legal questions she may have. He is not required to advise her on the strategy or procedures. The court adds that he appreciates his presence more than he can say (2 R.R. 3-4). In open court with the attorneys and the Appellant present, the court announced that the Appellant was proceeding pro se against the court’s best admonishment. The court again disapproved of pro se representation on a felony case as the worst idea he had heard in years, but you’re insisting on it. Do you still insist? The Appellant replied

yes. The court again has examined the Appellant and allowed her to proceed pro se much to the court's reluctance. It was not the court's examination. It was done by the 339th or the 351st District Court some time back.

The court began by giving the Appellant a warning against engaging in any disruptive behavior. The prosecutor was not cautioned about being disruptive. This caution was not in front of the jury. The court's comments introduced the possibility that the Appellant might act out and become disruptive in the courtroom. Neither the Appellant nor the prosecutor had engaged in any disruptive activities. The projection that she would disrupt the proceedings had no basis. The negative scolding embarrassed the Appellant for exercising her right to self-representation (2 R.R. 4).

> THE COURT: And, Ms. Armour, there will be times that you and I are going to find ourselves sideways on this case. If in the unlikely event you become, shall we say, disobedient with the Court's rulings, I'll give you a heads-up –
>
> THE DEFENDANT: No.
>
> THE COURT:-- about slowing it down a little bit and backing it up a little a bit. If you disobey my warning to you, you may be held in contempt of court. I'll try not to do that. I don't want to do that. I haven't done it in over a decade. I am concerned for your freedom down here (2 R.R. 5).

The court had examined the Appellant much to the court's reluctance for the

Appellant to represent herself. Had better know the law books from cover to cover. The court did not demand the same standard of legal knowledge from the prosecutor, allowed his negative comments of disapproval of Appellant's decision to accept her constitutional right to self-represent. This demand implied Appellant would be held to a higher standard of legal knowledge in trying her case than the prosecutor. The court's comments showed a lack of respect for the Appellant personally, her intelligence, knowledge and her role acting pro se (2 R.R. 8).

JURY VOIR DIRE BY THE COURT

> THE COURT: Now, if you've got one, snap your chinstrap. This is a different process today, even different for me. This is my 37th year here. Today the case is called the State of Texas versus Elender Louisa Armour. Ms. Armour has chosen to represent herself. She has been admonished or warned several times about the disadvantages of representing yourself in any case, especially in a felony allegation. To Ms. Armour's right, talking to her right now, is what I call an amicus curia, a friend of the court, Mr. Adam Muldrow. I personally recruited Mr. Muldrow this morning to sit next to Ms. Armour to advise her on the legal nuances of a trial. And trust me, Mr. Muldrow is a friend of the court. He was my young prosecutor, oh, a decade or so ago. He's been a noted and experienced defense lawyer for well over six years now, handling every case from capital murder on down. He is an experienced, competent, ethical

trial lawyer who is here exclusively at my request. He does not represent Ms. Armour. He cannot advise her as to strategies or procedures. He can assist her on the tricky, tricky parts of this book she better known cover to cover, which I don't think that she does (2 R.R. 9).

THE COURT: Let me help you out there. Let me cheat a little bit. If there's a nuance, a little thing that she's making to get something into evidence, I hate to tell you this, what I'm going to do, I'm going to trot you out of my presence back to the jury room, give her a cheat sheet on how to do it. The government will not, in my court, run roughshod over a citizen who should have counsel present (2 R.R. 66).

THE COURT: The obvious question: what the heck is a reasonable doubt? We don't have a definition of reasonable doubt. There's no definition for it. We're going to trust you to use your common sense, life experiences, treat both sides fairly and equally, listen carefully (2 R.R. 12).

Above the court directly violates the teaching of In. Re. Windship, 397 U.S. 358, 361). According to Windship, any person accused of a crime will be at a severe disadvantage amounting to a life of fundamental fairness if an adjudged and imprisoned on the strength of the same evidence as would suffice in a civil case. The above judicial comments are not only improper under Tex. Code of Crim. Proc.

38.05 but lower the state's burden of proof and affect a fundamental right of the Appellant.

The judge announced by the above comments to the jury that he would be helping the Appellant by giving her a cheat sheet of what to say. This is undercutting her competence and ability to represent herself. First she has not asked for help from the court nor requested special privileges in trying her case. His comments were unnecessary, gratuitous and biased against her case, her right to exercise pro se representation and to her competency as pro se counsel.

> THE COURT: You know, I missed those names. Would you do it for me one more time with that soft voice of yours? (3 R.R. 19).

Here the judge is addressing, almost intimately, Ms. Travelstead, a major state's witness to repeat names to him in a flirtation manner. He also compliments the witness at the same time referring to her "soft voice." This coziness with the state's witness in front of the jury.

> THE COURT: So, there's two dark vehicles. One in the driveway and one in the roadway. Can you help us out?
>
> Mr. Morse: Yes, judge, right up here in the top left where Ms. Workman's pen is, it is on the street.
>
> THE COURT: Is that correct?
>
> THE WITNESS: Yes.

THE COURT: Great. Proceed sir.

The Appellant complained that the trial court's comments were prohibited by the long-standing citizen's right to her trial being overseen by a fair and impartial judge. The court made the prohibited comments during voir dire, the state's examination of witnesses, the Appellant's cross-examination of witnesses of the complainant were improper comments on the weight of the evidence in violation of Tex. Code of Crim. Proc. Article 38.05, Moore v. State, 624 S.W.3d 681.

A. Ms. Armour.

Q. Can you - - did you learn about the events that happened during that alleged kidnapping?

A. Yes.

Q. Can you tell the jury what you learned?

A. Well, I was at work and I got a phone call from the school. They said that Ms. Armour grabbed Natalie's arm. Natalie grabbed a pole –

THE DEFENDANT: Objection. Hearsay - -

THE COURT: What's your objection?

THE DEFENDANT: Hearsay.

THE COURT: Objection sustained.

THE DEFENDANT: Thank you.

Q. (By Mr. Morse) So can you tell us what you know happened?

A. Based on - -

Q. Based on your own personal knowledge - -

A. My own person - -

Q. - - when you learned about what happened.

A. Yes. When I learned about what happened from Natalie and from the school, is that she was - -

THE DEFENDANT: Objection.

A. I'm sorry. I don't know - -

THE COURT: What's your objection?

THE DEFENDANT: Hearsay.

THE COURT: Not yet. Hold that thought. Overruled.

Q. (By Mr. Morse) Please Continue, ma'am.

Q. Okay. Is that her arm was grabbed, she grabbed - -

THE DEFENDANT: Objection. Sorry. It's hearsay. I'm sorry about standing up.

THE COURT: Sustained."

DEFENSE COUNSEL: Give us some direction. We can go state of mind -

MORSE: Yes Judge - -

THE COURT: - - her perception.

MR. MORSE: She's going from personal knowledge.

THE COURT: Not what other people may have told her.

THE WITNESS: Okay.

THE COURT: Okay? It's crazy. Even the lawyers don't understand it.

THE WITNESS: Okay.

THE COURT: Trust me.

THE WITNESS: It's confusing.

THE COURT: All right?

THE WITNESS Yeah. Would you like me to continue?

Q. (By Mr. Morse) So while we can't go into what somebody else has told you –

A. Okay.

Q. - - do you have knowledge about what happened that day?

A. Yes.

Q. And what happened that day?

A. I - - sorry. I don't know what I'm saying wrong, but from what the school has told me - -

THE DEFENDANT: Hearsay.

A. Okay.

THE DEFENDANT: Sorry.

A. No, it's okay. I don't know what - -

THE COURT: Help her out, Mr. Morse. Give some direction.

Q. (By Mr. Morse) Did the defendant pull Natalie's arm?

THE DEFENDANT: Objection, Your Honor. How is she - - she wasn't there. It's all-

THE COURT: That would be a good question on cross, won't it?

THE DEFENDANT: Yeah.

THE COURT: Hold that thought. Overruled.

Q. (By Mr. Morse) Did the defendant grab Natalie's?

A. Yes.

Q. Does the defendant have legal custody of Natalie?

A. At that time, she didn't have legal custody, but she did have the right to see her under supervision.

Q. Was the school trip one of those supervised visits that she would have been allowed to see her daughter on?

A. No.

Q. Okay. When you got the news about the attempted kidnapping, how did that make you feel?

A. I was terrified.

Q. And did you have any personal knowledge of the defendant's prior behavior?

A. Yes, I did.

Q. Did the defendant go to the field trip with the school and your daughter?

A. No.

Q. Was she invited to the field trip?

A. No.

Q. So she just showed up?

A. Correct.

Q. Did she have permission to take your daughter that day?

THE COURT: "Okay. Deep breath, Ms. Armour. It's now your turn to ask Ms. Travelstead some questions. You may only ask questions and not argue with.

THE WITNESS: Clear?

THE DEFENDANT: Yes.

THE COURT: It's your turn.

THE DEFENDANT: I made notes. I'll do the best I can.

THE COURT: Thank you, ma'am. Nice and loud, please.

THE DEFENDANT: Thank you. I'm going to bullet-list this because I'm not very eloquent and I'm just trying to, you know - -

THE COURT: Up to you.

CROSS-EXAMINATION ELIZABETH TRAVELSTEAD

By The Defendant:

Q. Number one, you mentioned custody. Based off what, what - - why do you say that I don't have custody?

A. Based on my knowledge from the records that I was shown.

Q. But you don't have personal knowledge of custody?

A. I went off the legal documents that were shown to me.

Q. Okay. So, on March 20th when I'm outside your house, the custody order that you're referring to is - -does it have any injunction in it?

A. I'm not sure. I'm - -

Q. But you're sure it says I don't have custody?

A. Yes.

Q. Okay. Well, have - -at any time, for as long as you've known John Holley, me, Alice, whatever, have you ever - - have I ever come to your door?

A. Yes, you have. Would you like me to continue?

Q. Can you tell me what year that was?

A. I believe it was the same year you knocked on my door to see if John Holley was there. And I called him right away and I said: What does she look like? And you knew exactly what I was talking about, described you.

Q. All right. The neighbors - - are you close with your neighbors?

A. The ones down the street, no.

Q. The ones I was speaking to allegedly.

A. No.

Q. So, you haven't spoken - - you didn't speak with them at all after the fact?

A. After the fact, yes.

Q. Yes. You - -

A. Yes.

Q. - - had a conversation with the neighbors?

A. Yes, I did.

Q. Okay. That's good. You keep calling Natalie and you mentioned adoption.

A. Yes.

Q. Can you tell me how you arrived at that information or to those?

A. Again, there's legal documents with her name as Natalie Holley.

Q. Can you give me a date on those?

A. If I were to pull them up, yes, I could give them a date - - give you a date.

Q. Were you present in the courtroom for the alleged adoption?

A. Yes, I was.

Q. Was I present?

A. No.

Q. Are you still married to John Holley?

A. No.

Q. Did you use that custody adoption name change and termination of my rights, which - - order - - we'll call it that even though it may not be one - - did you use that in your divorce?

A. No. I'm sorry I'm not - -

Q. Did you - -

MORSE: Objection. Relevance, your Honor.

A. - - understanding.

THE COURT: No. We'll hear it briefly. Let's try that question one more time slow and steady, please.

THE DEFENDANT: The - - she believes that my daughter's name is Alice and that she has adopted her and that I have no rights.

THE COURT: Is that accurate - -

THE DEFENDANT: She's already said that I wasn't present - -

THE COURT: One at a time, please. Is that accurate, Ms. Travelstead?

THE WITNESS: Her name is Natalie Holley. And I do have all the paperwork if you need it submitted.

THE COURT: So, in her mind, the child's name is now Natalie Holley.

THE WITNESS: Holley, yes.

THE COURT: Thank you.

THE DEFENDANT: Not according to the vital - -

THE COURT: I don't know. Let's wait and see.

Q. (By the Defendant) That being said, I wasn't present in the courtroom, right?

A. Correct.

Q. Who was?

A. The Judge, the lawyers, John.

Q. Lawyer for me there?

A. I don't - -

Q. No?

A. - - believe so.

Q. Do you know where I was at the time of this alleged hearing?

A. I think you were in jail at that time.

Q. Did you serve me or anybody serve me to be there?

A. I am not sure.

Q. I'll tell you they didn't.

Pictures - - so other than the one time that allegedly - - because I don't recall - - went to your house and knocked on the door looking for John Holley -

A. Uh-huh.

Q.- - was there any other time I've been to your house or to your door or down your street or - -

A. Oh, yes. You were on my street multiple times. There were police reports – "

Q. To your door. Anything that would have been a threat to you. At your door knocking, pulling up to your cars, things like that, things that you may - -"

A. You did walk up to my driveway and record John as you were recording something. I want to say it was on Facebook live or something like that. So yes, you've come - -

Q. I remember that night.

A. - - very close to my door, yes.

Q. And I just want to - - because I'm not sure that I got this right because I have something that counters what you said.

A. "Okay.

Q. Did you admit that custody order into your divorce decree - - into your divorce? Did you admit it as evidence? Did you use it with regards - -

MR. MORSE: Objection. Relevance, your Honor.

Q. (By the Defendant) - -to you seeing the child?

The Court: Objection is relevancy.

Any response, Ms. Armour?

THE DEFENDANT: "It is relevant. It's –

THE COURT: Tell me why.

THE DEFENDANT: Because it doesn't exist. She's already admitted I wasn't in court. I had no knowledge of it.

THE COURT: Apples and oranges. Objection sustained.

MR. MORSE: Thank you, Your Honor.

THE COURT: Something else, Ms. Armour?

Q. (By the Defendant) Did you know his first wife, John Holley's first wife?

A. No.

Q. Then that won't …

How long - - oh. After the police came - - it's daylight, 7:30 om the evening, its daylight, we've got pictures - -

A. Uh-huh.

Q. I can't interject it, so …

Can you tell me if it was light or dark out when they left?

A. I don't remember.

THE DEFENDANT: I think that's all.

The Court: Have a seat. Thank you, ma'am.

THE DEFENDANT: Thank you.

THE COURT State, any more questions of Ms. Travelstead?

MORSE: Nothing more from the State, your Honor.

THE COURT: You can step down, go to the hallway and we'll come back and talk to you.

THE WITNESS: Yes, sir.

THE COURT: Does this exhaust your list of

(Open court, defendant present, no jury)

THE COURT: Just a quick note. Ms. Armour, while this case is going on, if you have any contact with Ms. Travelstead - -

THE DEFENDANT: Oh, no, no no.

THE COURT: Let me finish.

THE DEFENDANT: Okay.

THE COURT: - - phone call, digital, drive by the house, park in the driveway, I will place you in custody so fast it will make your head spin. So, let's just get this case done together. All right?"

THE DEFENDANT: Yes. (3V R.R. 22-24)

Throughout the testimony of Travelstead, the court spoke to her respectfully favorably and with interest. Even when the witness answered in narrative several times, the court did not instruct her to answer the question without narrative or adding extraneous bad acts and crimes. Each narrative contained evidence harmful to the Appellant's case. The effect was stronger because at the same time the prosecutor led the witness and her responses unobjected to by the Appellant (3V R.R. 28).

A. So I was on the phone with my mom when I drove up and I told her I saw the vehicle and I needed to call the cops so that's what I did. Got off the phone with my mom, went into the house and called 9-1-1.

The trial judge improperly commented on the weight of the evidence. The court's comments diminish the credibility of the defense's case, Clark v. State, 878 S.W.2d 224, 226 (Tex App-Dallas 1994, no pet.)

Lt. Steven S. Romero with Harris County Constable's Pct. 4 testified that he met the Appellant on March 20, 2018, at the residence of the Holley's. The Appellant on cross examination asked Romero why he thought she wasn't credible. He testified because of her demeanor, said she was all over the place, wasn't concentrating or anything, talking about a sexual assault was discredited continuously on her daughter. Romero also testified that the father of her child killed his ex and her new boyfriend. He testified that he checked with Colin County Children's Protective Service and they said the sexual was unfounded. The sexual assault and murder had been investigated earlier and was found to be false by Colin County (4V R.R. 51-52). The Appellant questioned Romero about the weapon that was taken from her on March 19, 2018, and corrected him when he indicated that it happened at Humble High School instead of the Main Street Theater, downtown Houston (4V R.R. 52-53). The Appellant questioned Romero regarding the one neighbor of the Holley's that she spoke to on March 20, 2018. Romero testified that

the Appellant said you were close friends with the neighbor and according to Romero the neighbor said that you were not close friends with them (4V R.R. 54). Romero did not indicate the name of the neighbor in his report or supplement (4V R.R. 55).

Corporal Valencia Pierson with Harris County Constable's Pct. 4 was dispatched to the location at 6711 Rockwall Trail Dr., Tomball, Texas. She was the deputy in this area and had been at the Holley's residence before because of the Appellant (4V R.R. 63). The Holley's were very concerned about the Appellant even before the last incident. Pierson described the Appellant's demeanor as erratic and confrontational. She described Travelstead as frantic, worried, but relieved that the Appellant was in custody.

The witness was asked by prosecutor Workman what she learned about the alleged activity on the day before March19, 2018. The Appellant objected on the basis of hearsay. The prosecutor represented to the court that the witness learned about it from witnesses on the scene and that it went her state of mind regarding the credibility of the Appellant. The witness thought the Appellant's actions were concerning. The court instructed that what that the witness' response is what we call hearsay. It's not offered for the truth of the matter only for the deputy's deception of the events. Maybe it's true, maybe it's not true, we don't know. It's how it affected the corporal's behavior that day that's relevant. The witness responded to the prosecutor that the Appellant showed up to a school field trip of her daughter

attempted to remove her. She was arrested for having a licensed handgun on her at the time. The witness's previous statement was that the Appellant's demeanor on March 20, 2018, was hostile. The prosecutor then questioned the witness, do you have any other adjectives that you would use? Other than erratic and confrontational does that pretty much describe the scene and the witness. Response was a yes (4V 65-67).

CROSS EXAMINATION BY APPELLANT
OF CORPORAL PIERSON

The Appellant cross examination began with "Am I erratic now? I'm kind of all over the place, I'm a bit nervous, I'm anxious to which the witness replied I don't understand your questions." Pierson claimed the Appellant pulled into a neighbor's house when she tried to make contact with her. Pierson clarified that the Appellant pulled into the neighbor's driveway. There was no photo or video of it. It was the neighbor on the right side of the Holley house and on the same side of the street. Pierson could not remember whether she knew that the Appellant had a handgun license. The Appellant testified if an officer approaches me, the first thing I do is hand him my concealed handgun license and my driver's license and tell him where I'm carrying it (4V R.R. 73). Pierson testified that the neighbor's whose driveway the Appellant used said that the neighbors did not know who you were. Trying to pinpoint which house Pierson was talking about, she was unable to provide the

location of the house where she had spoken to the neighbor, a young boy. When asked whether or not it was a couple or single, Pierson responded there was a child all alone on the phone. Then gratuitously added "He was calling his mother because he was scared." The court intervened when the Appellant asked Pierson and you don't know the time? The court stated, "questions Ms. Armour, not comments."

The Appellant said no, I said and you don't know the time? The court responded "oh, okay then kind of mumbled back" (4V 76).

ANALYSIS

JUDICIAL IMPARTIALITY

Due process requires a neutral and detached Judge. Berumit v. State, 206 S.W.3d 639, 645 (Tex. Crim. App. 2006). Citing Gagnon v. Scarpelli, 411 U.S.778, 786 (1973). The defendant has an absolute right to an impartial judge at the guilt/innocence and punishment stages of trial. Segovia v. State, 543 S.W.3d, 497, 503 (Tex. App. – Houston [14th District].

Voir dire is designed to find an intelligent, alert disinterested, impartial and truthful jury. Drake v. State, 465 S.W.3d, 759, 764 (Tex. App. [14th District] 2015, no pet.). In the instant case, the trial court uttered enough impermissible judicial comments dealing with her right to representation.

Statutory authority Article 38.05 prohibits judicial comments: in ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the

weight of the same or its being in the case but shall simply decide whether or not it is admissible; nor shall he, at any stage of the proceedings previous to the return of the verdict make any remark calculated to convey to the jury his opinion of the case. Judicial comments must be examined as to whether they are improper under Article. 38.05. Simon v. State, 203 S.W.3d 581, 590 (Tex. App. – Houston [14th District] 2006, no pet). Next, there must be an examination to determine if the comments are material Id. at 592. If the comments are both improper and material then harm is measured by Tex. R. App. Proc. 44.2(b). In the instant case, judicial comments prohibited by Tex. Code of Crim. Proc. 38.05 flowed throughout the entire trial. The Appellant neither objected nor requested any specific instructions to disregard. The judicial comments entered in were clearly calculated to inflame the minds of the jury. The impressions produced on the minds of the jurors were impossible to remove. Waldo v. State, 746 S.W.2d 750, 752 (Tex. Crim. App.1988). Preservation of error is not a question here because the aggreges judicial comments are a category two, Marin right that cannot be waived by inaction. Proenza v. State, 541 S.W.3d 786, 801 (Tex. Crim. App.2017) and Marin v. State, 851 S.W.2d, 275, 278-79 (Tex. Crim. App.1993).

In the Moore v. State, 624 S.W.3d 676, 681 (Tex. App. 2021) case, a domestic violence, impeding normal breathing case, the court made the following prohibited comments under Tex. Code of Crim. Pro 38.05 on the defense attorney's cross

examination of the complainant. “I’m the court, I’m hoping you’re going to go somewhere with this. What is the relevance? Defense counsel: if she’s being attacked from behind and the only one holding the cell phone, in relatively the same place, it’s inconsistent.

THE COURT: It could be on the table or somewhere over there.

DEFENSE COUNSEL: It does move in the video.

THE COURT: Maybe shook the room, table or something.

Defense Counsel objected to the commentary of the evidence.

THE COURT: I’m just saying, I don’t understand where you’re going with this.

DEFENSE COUNSEL: I object to the court’s commentary on the weight of the evidence.

THE COURT: You keep asking her that. You’ve asked her that question so many times.

DEFENSE COUNSEL: Well, I understand the court’s position but I object and ask it be stricken from the record.

THE COURT: It will be stricken from the record , it’s just rhetorical. Please ask your question and get an answer and let’s move on.

DEFENSE COUNSEL: I ask that the jury be instructed to disregard the court. The court: Please disregard my statement. A mistrial was requested and denied.

In Moore, 624, S.W.3d 681(Tex. App. 2021), the court made a series of comments questioning the relevance of the Appellant's impeachment attempt of the credibility of the complainant and providing hypothetical scenarios corroborating the complainant's account state's case. (1.) The statements implied approval of the state's argument, (2.) indicates disbelief in defense position and (3.) diminishes the credibility of the defense's approach to the case.

The judicial comments, demeaning treatment of the Appellant, interruptions, snide remarks and aid to the prosecutor in admitting extraneous offenses, hearsay, leading witnesses and instructions lowering the state's burden of proof in the Appellant's trial was appalling.

ISSUE THREE

INSUFFICIENT EVIDENCE THAT APPELLANT COMMITTED AGGRAVATED ASSAULT

INDICTMENT

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, Elender Louisa Armour, hereafter styled the Defendant, heretofore on or about March 20, 2018, did then and there unlawfully, intentionally and knowingly threaten Joshua Matthew

Bunyard with imminent bodily injury by using and exhibiting a deadly weapon, namely a firearm.

The indictment was filed April 16, 2018. The court in voir dire failed to explain that the charge of aggravated assault included proof of the element of a threat and the definition of a threat. The Appellant denied commission of the aggravated assault.

THE VEHICLES

The Appellate was hoping to have a glimpse of her daughter. The only reason she was in the neighborhood was her daughter. She believed that she was the custodial, managing conservator. The Holley's had terminated her parole rights and changed her daughter's name while the Appellant was in jail on this charge. The painful loss of access to her daughter motivated her trips to the Holley's neighborhood to see her daughter even for a moment. Additionally, checking on her daughter with the knowledge that John Holley was a violent man, was imperative for her daughter's safety. The Holley's had moved before and did not advise her of their location, secreting her daughter.

(SX 5) (6 R.R. 7) is a picture of the Holley's driveway. Travelstead's vehicle is parked on the right side. The Appellant is parked on the street two houses from the Holley's house. The complainant is not present (3V R.R. 27). (SX 6) (6 R.R. 8) is a picture of the Holley's driveway. Travelstead's vehicle is still parked on the right.

The Appellant remains parked in front of the neighbor's house. The complainant is in his vehicle on the street driving in front of the Holley's house and preparing to back into the driveway (3 R.R. 27). (SX 7) (6 R.R. 9) is a picture of the Holley's driveway. Travelstead's vehicle is still parked. The Appellant is still parked in front of the neighbor's house. The complainant is beginning to back into the Holley's driveway (3 R.R. 27). (SX 8) (6 R.R. 10) is a picture of the Holley's driveway. Travelstead's vehicle is still parked. The complainant is backing in the driveway (3 R.R. 27). (SX 9) (6 R.R. 11) is a picture of the Holley's driveway. Travelstead's vehicle is still parked. The Appellant is parked in front of the next-door neighbor's close to the Holley's driveway, but not blocking it. The complainant drove off of the driveway and into the street turning right (3 R.R. 27). The court ordered these exhibits transferred to the Fourteenth Court of Appeals (SX 10 (6 R.R. 12), (SX 11 (6 R.R.13), (SX 12 (6 R.R. 14).

The complainant's only opportunity to see the Appellant in her vehicle would have been through her front windshield. The Appellant's vehicle was perpendicular to the complainant's as he drove off of the driveway. The right passenger side of her vehicle was visible to the complainant but the tinted windows blocked his view to see inside her vehicle. To be able to see the Appellant, it would have necessitated turning his head to the left to look back through her windshield while exiting the driveway and turning right on to the street. The state's exhibits are proof that the

Appellant did not block or run up on the complainant's vehicle as maintained by the complainant on the stand. When the complainant drove away from the Holley's, the Appellant remained in the same spot until the police arrived. She did not follow the complainant. When the complainant was driving off the driveway, the Appellant used her cell phone to take a photo of the back of the complainant's vehicle in order to document his license plate number (DX 2 (6 R.R. 23) admitted into evidence (4 R.R. 182), (DX 3 (6 R.R. 24), offered (4 R.R. 185).

The Appellant took a screen shot of her cell phone call log of the incoming and outgoing calls of March 20, 2018. It was not admitted into evidence by the court who prompted the prosecutor to make an objection. The objection was that the Appellant was trying to get into evidence a 9-1-1 call without a business record affidavit. The judge sustained his objection in error as she was trying to admit a photo of her cell phone calls while she was in the Holley neighborhood. The photo was proof that she had her cell phone in her hand when she took the photo of the complainant's license plate, not a firearm. The photo proved the credibility of her testimony that she called the police (9-1-1) after she saw the complainant at 7:32 P.M. on March 20, 2018. The transaction between the complainant and the Appellant was very quick. At pretrial, one of the prosecutors informed the Appellant that Travelstead had reported to the police that she pointed a weapon at the complainant. Considering the numerous issues the Appellant and the Holley's had with one

another, it is highly likely that someone in the family had informed the complainant that the Appellant carried a firearm and was licensed to do so. The complainant could have expected to see a pistol.

In Whatley v. State, 445 S.W. 3d 159 (Tex. Crim. App. 2014) "In determining whether the evidence is legally sufficient to support a conviction, a reviewing court must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt." Gear v. State, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011), citing Jackson v. Virginia,443 U.S.307,318–19,326, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). This "familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). "Faced with a record of historical facts that support conflicting inferences, the reviewing court must presume ... that the trier of fact resolved any such conflicts in favor of the prosecution and must defer to that resolution." (internal quotation marks omitted; omission in original).

"[A]n inference is a conclusion reached by considering other facts and deducing a logical consequence from them." Hooper v. State, 214 S.W.3d 9, 16 (Tex.

Crim. App. 2007). Viewing the evidence in the light most favorable to the verdict, we decide that the evidence presented to the jury, along with reasonable inferences therefrom, was sufficient to support a finding beyond a reasonable doubt that Appellant's actions were voluntary under Section 6.01(a).

Olivas v. State, 203 S.W.3d, 341, 345 (Tex. Crim. App. 2006). Section 22.01(a)(2) "does not explicitly indicate whether the intended victim must perceive or receive the threat. The question turns on the meaning of the term 'threaten' as used in the Pena Code. Does it mean an act that must be perceived by the intended victim? Or must the actor only act with the intent that the victim perceived his threat? At 347, in our view the better position holds that although the question whether the defendant's conduct produced fear in the victim is relevant, the crucial inquiry remains whether the assailant acted in such a manner as would under the circumstances portend an immediate threat of danger to a person of reasonable sensibility." In the instant case, the complainant misperceived a threat where there was no intent to cause the complainant a reasonable apprehension of imminent bodily injury. A threat may be communicated by action or conduct as well as words.

Jefferson v. State, 346 S.W.3d 254, 256-57 (Tex.App.-Houston [14th Dist.] 2011, no pet.). "A person commits assault by threat when he acts with the intent to cause in another person a reasonable apprehension of imminent bodily injury, though not necessarily with the intent to cause such harm. It is well established that a threat

may be communicated by action or conduct as well as by word. "See also Jones v. State, 500 S.W.3d 106, 113 (Tex.App.-Houston) [1st Dist.] 2016, no pet.).

ISSUE FOUR

COUNSEL'S ADOPTION OF THE APPELLANT'S PRE-TRIAL MOTIONS AND OBJECTSIONS TO HAVING AN ASSOCIATE JUDGE TRYING HER CASE

On June 20, 2023, Appellant filed motion to set hearing . the purpose of the motion was to have her case tried by the presiding Judge Bell of the 339th District Court.

FACTS:

1. On May 9, 2023, the defendant filed her Motion to Dismiss and Mark Ellis told her it would be heard on May 24, at the next court date.
2. When the defendant called the district clerk to ask a question, she was informed that her case had been moved to ERD3 and an associate judge would be presiding over her case.
3. On May 24, 2023, at 8:30 am the defendant filed an Objection to an Associate Judge with the District clerk and took several copies of the motion with her to the FLC courtroom.
4. After receiving a copy of the Objection, the associate judge, Mike Wilkerson, held a "hearing" where he allowed the D.A., Brad Morse to berate her, listened to an offer of "10 years or deferred" then tried to convince her to take the

deferred adjudication. When the defendant reminded Wilkinson that an objection was filed and he was no longer the judge and the case would be referred to the 339th for trial on the merits, Judge Teiva Bell presiding, he stated "I am sending the case to a senior judge." He then set the jury trial for August 18, 2023. Several days the clerk's record in this case shows the court changed from ERD3 to ERD5.

5. The defendant spoke with Ruth Rosa, the coordinator for the 339th, and was told the judge is on vacation and won't be back till June 5th "after I speak to her, I will give you a call" but she never called back and multiple attempts to reach her by phone have been unsuccessful.

By operation of law this case should be in the 339th. And the first order of business should be any outstanding pretrial motions.

Texas Gov. Code Section 54A.008(d), an associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Texas Gov. Code Section 74.056 allows a presiding judge to assign judges of the administration region to hold special or regular terms of court to try cases and dispose of accumulated business. A party may object to the assignment of a judge. Id. at 74.053(b).

"The objection, which may be made without cause or reason, automatically disqualifies the assigned judge." In re Houston Lighting & Power Co., 976 S.W.2d 671, 672 (Tex. 1998).

The statute requires an objection to be filed before the first hearing or that including pretrial hearings over which the assigned judge is to preside. Id. at 74.053(b).

Once a timely objection is made, the disqualification is automatic and mandamus is available if the assigned judge overrules the timely objection to Mitchell Energy Corp. Ashworth, 943 S.W.2d 436, 437, 440-41(Tex. 1997). Any subsequent orders made by that judge are void. Id at 437.

The objection must be the first matter presented to the visiting judge for a ruling. Chandler, 991 S.W.2d at 383; Morris v. Short, 902 S.W. 566, 569 (Tex. App.-Houston [1st Dist.] 1995, writ denied).

This requirement imposes an obligation on the complaining litigant to urge the objection at the commencement of the first hearing if it has not already been determined by the visiting judge stepping aside or by the administrative presiding judge directing the visiting judge to step aside. Chandler, 991 S.W.2d at 383.

The objection must be presented to the assigned judge and ruled upon as a preliminary matter before the visiting judge is prohibited from hearing the case. But

Mike Wilkinson abused his discretion when he didn't sustain the Objection, thus all orders, including the reset, are void.

If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial. Szahyl v. Gibson (2016) no. 01-15-00895-CV.

The Objection to an associate Judge filed May 24, 2023, at 8:30 am, is final, as a matter of law and the fact that Mike Wilkinson refused to remove himself and allowed the "hearing" to continue shows the bias and corruption that exists in this case.

The motion was filed on May 24, 2023, and advance orally objecting to the trial judge and summarily denied without a hearing. The motion was filed as soon as the Appellant was informed that the case would be tried in ERD court.

ISSUE FIVE

APPELLANT COUNSEL ADOPTS THE APPELLANT'S MOTION TO SET ASIDE THE INFORMATION FOR FAILURE TO PROVIDE A SPEEDY TRIAL

See Appellant's pro se motion, statement of facts and order to set aside indictment at (C.R. 120-130). The witnesses displayed numerous lapses of memory because of the delay in providing a speedy trial. The complainant, and the law enforcement officers were the least knowledgeable of the facts of March 20, 2018, because of their lack of recall and preparation for court. No witness questioned could remember the name of the neighbor or neighbors that Appellant was visiting

briefly. Nor could the officers identify the location of their residence location. The complainant seemed to have the most difficulty even in remembering the facts of the day in question. For example, he could not remember whether he called 9-1-1, whether he testified that he was partially blind, Then he claimed that he even though he previous testified on direct to being partially blind and not having good eyesight that it was anxiety that caused his vision to shake. He demonstrated in the courtroom before the jury that he could not identify anyone in the room who he thought pointed a gun at him. Nor could he identify the Appellate as the person he thought waved a gun at him, even with refreshing himself a month or so before trial, with her on-line photograph (4 RR. 99). The court finally decided it would not help the complainant identify Appellant even if he was brought to the counsel table. The court did not think that proximity was the issue. He did not remember that he signed an oath when he signed a police report. Earlier the court kept accommodating him by moving him closer to the screen where the surveillance video (SX 12) was played for the jury.

PRAYER

Appellant requests relief in the form of a reversal and new trial. There was no waiver of counsel for the trial beginning December 5, 2023. A written waiver was executed, void of a knowingly, intelligently and voluntarily because the Appellant had a long-standing custody conflict with resultant, intrenched delusions with the

same people and others who she believed conspired against her by keeping her daughter away from her, illegally.

The appellate court is requested enter a finding that the trial court repeatedly commented on the pro se representation in a demeaning manner toward the Appellant and her role in self-representation. It appeared that the court unnecessarily scolded, warned and threatened the Appellant. At times, that such verbal attacks were unwarranted and appeared to be harassing and allowed the jury to see not only his bias for the Appellant's representation but his belief in the state's witnesses in violation of Tex. Code of Crim. Proc. 38.05.

The appellate court is requested to find that the evidence is insufficient to support the Appellant's conviction for the offense of Aggravated Assault With A Deadly Weapon. The record does not support the jury's verdict of guilty. The complainant's ability to perceive visually and conceptually as well as his veracity was impeached. The Appellant prays that the appellate court reverse and dismiss the Aggravated Assault With A Deadly Weapon.

The appellate court is requested to find that the court erred in not returning the case to the trial court once there has been an objection to him trying the case. The court is asked to reverse and dismiss or reverse and order a new trial.

The appellate court is requested to find that Appellant's case should be dismissed based on the adopted motion of pro se counsel to dismiss for lack of a

speedy trial. Witnesses cannot be found and those present have difficulty accurately recalling the events of March 20, 2018, due to the passage of time.

CERTIFICATE OF SERVICE AND COMPLIANCE

This is to certify that: (a) the word count function of the computer program used to prepare this document reports that there are 14,489 words in it: and (b) a copy of the forgoing instrument will be served by efile.txcourts.gov to:

Jessica Caird
Assistant District Attorney
Appellate Division
500 Jefferson, Suite 600
Houston, Texas 77002

Respectfully submitted,
/s/ Clyde H. Williams
P.O. Box 841611
Pearland, Texas 77584
Telecopier No.: (713)234-6519
State Bar No. 21521100
Attorney for Appellant

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Clyde Williams on behalf of Clyde Williams
Bar No. 21521100
clyde@attorneyclydewilliams.com
Envelope ID: 93104791
Filing Code Description: Brief Requesting Oral Argument
Filing Description: Appellant's Brief
Status as of 10/14/2024 8:07 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Clyde Williams		clyde@attorneyclydewilliams.com	10/13/2024 7:05:29 PM	SENT