IN THE COURT OF APPEALS

SECOND JUDICIAL DISTRICT OF TEXAS

AT FORT WORTH

ROSA MARIA ORTEGA,	§	
Appellant	§	
	§	
VS.	§	**NO. 02-17-00039-CR**
	§	
THE STATE OF TEXAS,	§	
Appellee	§	

APPELLANT'S BRIEF SPECIFYING ERROR OF WHICH APPELLANT COMPLAINS ON APPEAL

APPEALED FROM CAUSE NO. 1434155D IN THE CRIMINAL JUDICIAL DISTRICT COURT NUMBER THREE OF TARRANT COUNTY, TX

ORAL ARGUMENT IS NOT REQUESTED

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The State of Texas, Appellee	§ §	

TO THE HONORABLE COURT OF APPEALS:

COMES NOW, Rosa Maria Ortega, hereinafter referred to as Appellant, and respectfully submits this her brief specifying errors of which Appellant complains on appeal. Pursuant to the Texas Rules of Appellate Procedure, Appellant would show through her attorney the following points of error of which she wishes to complain.

STATEMENT OF THE CASE

Appellant was charged with two counts of illegal voting, pursuant to the Texas Election Code 64.012(B). (C. R. 7, 357-363) Appellant entered a plea of

not guilty. The jury found Appellant guilty of both counts, and sentenced her to eight (8) years on each count, concurrently, to the Institutional Division of the Texas Department of Criminal Justice, and a $5,000 fine in each count. (5 R. R. 155) (6 R. R. 6) (C. R. 357-363) The trial court certified that Appellant had the right to appeal. (C. R. 356) Appellant timely filed notice of appeal on 9 February 2017. (C. R.364)

ISSUES PRESENTED

Point of Error One

The trial court abused its discretion by denying the motion to suppress the involuntary, un-Mirandized, oral statement that incriminated Appellant. (C. R. 287-89) (4 R. R. 70-71) (7 R. R.: *State's Exhibit 10*)

Point of Error Two

The trial court erred by allowing improper and inflammatory jury argument outside the record. (5 R. R. 180)

STATEMENT OF FACTS

Sergeant Joseph Boone Cadwell, investigator with the Texas Attorney General's office, investigated public integrity and Election Code violations. (4 R. R. 41) Sergeant Cadwell received allegations that Appellant, Rosa Ortega voted illegally, and he ran a background packet on her. (4 R. R. 43) He inquired

regarding her elections records and custom and immigration records. (4 R. R. 44) Ms. Ortega registered to vote in Dallas County on September 9, 2002. (4 R. R. 45-47) She confirmed her signature on the voter registration application. The application stated that Ms. Ortega was a citizen and resident of Dallas County. Ms. Ortega confirmed her signature on the document was signed when she voted in November 2012. (4 R. R. 51-53) State Exhibit 9 showed voting history in Dallas County. Ms. Ortega voted in the November 2012 general election and in the May 2014 primary runoff election.

Sergeant Cadwell interviewed Ms. Ortega at her home in Grand Prairie. (4 R. R. 60-61) In that interview, Ms. Ortega said she was not a U.S. citizen. State Exhibit 13 is a certified copy of Customs and Immigration A-file for Rosa Ortega. There were no documents in her A-file showing an attempt to obtain citizenship. (4 R. R. 74-76) State Exhibits 14 and 15 show Tarrant County voter registration applications from October 2, 2014, and March 19, 2015. Ms. Ortega verified that she filled out State Exhibits 14 and 15. On State Exhibit 14, she marked "no" on the U.S. citizenship question. On State Exhibit 15 that was filled out on March 19, 2015, she marked "yes" on the U.S. citizenship question. (4 R. R. 80-83) Sergeant Cadwell obtained Ms. Ortega's driver's license application, State Exhibit 12. She presented her green card to the driver's license processor. She is noted as

a resident alien on this form. (4 R. R. 86-87) Cadwell obtained the Dallas County voter registration file for Ms. Ortega, State Exhibit 1. Ms. Ortega marked yes she was a U.S. citizen. The form is dated January 21, 2014. On, State Exhibit 14, voter registration application for Tarrant County Rosa said "no" to the US citizenship question. (4 R. R. 91-93) According to Cadwell, from the years 1997 to 2016, when related to voting Ms. Ortega claimed she was a citizen, but when related to the Department of Public Safety or an interview with an investigator she stated that she was not a U.S. citizen, with the exception of the Tarrant County voter application. (4 R. R. 95-96)

Delores Stevens is employed with the Tarrant County Elections office. On the Tarrant voter register application, State Exhibit 14, Rosa Ortega stated "no" to the, "Are you a U.S. citizen?" question. (4 R. R. 135-37) Ms. Stevens sent a letter to Ms. Ortega indicating that a person must be a citizen to be eligible for voter registration. Ms. Ortega called the elections office to find out why she received the rejection letter. Ms. Stevens explained to her why her application was rejected. (4 R. R. 138-39) Ms. Ortega said that she did register to vote in Dallas County, and she asked to be sent another voter application. Ms. Stevens sent her another voter application. State Exhibit 15, Ms. Ortega returned the voter application and indicated that she was a citizen. (4 R. R. 140-41)

Jose Agustin Ortega said that Rosa Ortega is his sister. (5 R. R. 7) She was born in Mexico. Her family brought her to the US when she was still in diapers. Jose and her other brother, Tony, were born in U.S. The family thought Ms. Ortega was a citizen. (5 R. R. 10) Ms. Ortega's mother abandoned the family, and Ms. Ortega was sent back to Mexico with her grandmother (her mother's mother). (5 R. R. 13-14)

Tony Ortega is Ms. Ortega's brother. Ms. Ortega never knew the difference between resident and citizen. According to Tony, she did not know any better. (5 R. R. 23, 33-34)

Rosa Ortega, testified that for her whole life, she thought she was a U.S. citizen, because she never knew the difference between a U.S. citizen and a U.S. resident. If a government form offered Ms. Ortega a box to check resident, she would check "resident." (5 R. R. 47, 54-55) She thought when she sent in her voter application that the elections department would perform an analysis of her background and tell her whether or not she could vote. (5 R. R. 57) When she received a call from Tarrant County telling her that she could not vote, Ms. Ortega assumed she had checked the wrong box. (5 R. R. 61) Ms. Ortega denied her signature was on State Exhibit 1, the voter registration application for Dallas County. (5 R. R. 64) When Ms. Ortega voted in Dallas County in 2012 and 2014,

she was confused. When she voted, she thought she was a citizen and did not know the difference between resident and citizen. (5 R. R. 66-68)

SUMMARY OF THE ARGUMENT

Prior to showing up unannounced to Appellant's house, law enforcement gathered in its investigation that Appellant had made inconsistent statements on government documents about her citizenship. Law enforcement had developed information that Appellant had actually voted in elections, though her immigration status was legal permanent resident.

Without giving Appellant Miranda warnings, law enforcement questioned her and obtained multiple admissions to pointed incriminating questions in a recorded interview. Any of the multiple admissions regarding voting while her status was only legal permanent resident were sufficient, standing alone, to solidify probable cause. These circumstances caused a consensual encounter to transform into custodial interrogation, and the trial court abused its discretion by admitting the recorded, un-Mirandized, statements.

The trial court allowed State argument outside the record. The State inserted and argued that a not guilty verdict would open the "floodgates" to illegal voting—that by implication from the ruling received the trial court's stamp of

approval—and was one of the last statements heard by the jury before rendering the punishment verdict. Arguments that reference matters not in evidence and that may not be inferred from the evidence are usually "designed to arouse the passion and prejudices of the jury and as such are highly inappropriate." The reference to "floodgates" in our present-day, highly-charged, political atmosphere over illegal immigration was steeped in prejudice designed to arouse the passion and prejudices of the jury.

POINT OF ERROR ONE

The trial court abused its discretion by denying the motion to suppress the involuntary, un-Mirandized, oral statement that incriminated Appellant. (C. R. 287-89) (4 R. R. 70-71) (7 R. R.: *State's Exhibit 10*)

Argument and Authorities

Rosa Ortega raised and the trial court ruled adversely to her motion to suppress oral or written statements, via her Motion to Suppress Illegally Seized Evidence. (C. R. 287-89) (4 R. R. 70-71) Ms. Ortega raised in her motion that her recorded statement was not made voluntarily in violation of Texas Code of Criminal Procedure Articles 38.21, 38.22, and 38.23, as well as the Fifth and Fourteenth Amendments of the federal constitution. Ms. Ortega specifically urged as grounds that her un-Mirandized statement was custodial because the interrogating officer had probable cause to arrest Ms. Ortega at the time of the interview, and did not tell her that she was free to leave. (C. R. 287-89) (4 R. R. 70) Ms. Ortega properly preserved error. TEX. R. APP. PROC. 25.2, 33.1.

A trial court's ruling on a motion to suppress is set aside only on a showing of abuse of discretion. *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996). For mixed questions of law and fact that require more that an evaluation of credibility and demeanor, such as determinations of probable cause and reasonable

suspicion, *de novo* review is appropriate. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1994). "The decision as to whether custodial questioning constitutes 'interrogation' under *Miranda* is a mixed question of law and fact …" *Alford v. State*, 358 S.W.3d 647, 653 (Tex. Crim. App. 2012). If credibility and demeanor are not necessary to the resolution of an issue, "whether a set of historical facts constitutes custodial interrogation under the Fifth Amendment is subject to *de novo* review because that is an issue of law…." *Id*.

The need for Miranda warnings arises when a person being questioned by law enforcement officials has been "taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602 (1966). A person is "in custody" only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest. *Stansbury v. California*, 511 U.S. 318, 322, 114 S.Ct. 1526 (1994). The following situations may constitute custody: (1) when the suspect is physically deprived of his freedom of action in any significant way, (2) when a law-enforcement officer tells the subject he cannot leave, (3) when law-enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted, or (4) when there is probable cause to arrest and law-

enforcement officers do not tell the suspect he is free to leave. *Id*. at 323-25.

Miranda applies whenever a person in custody is subjected to either express questioning or its functional equivalent. *Rhode Island v. Innis*, 446 U.S. 291, 300-301, 100 S.Ct. 1682 (1980). The term 'interrogation' in *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police *should know* are reasonably likely to elicit an incriminating response from the suspect. *Id.* at 301-302. "The *Innis* test 'focuses primarily upon the perceptions of the suspect, rather than the intent of the police' in determining whether the suspect was coerced to provide incriminating information while in custody." *Alford*, 358 S.W.3d at 653, *quoting Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct. 1682 (1980). The Court of Criminal Appeals expressly adopted the *Innis* definition of interrogation for Fifth Amendment purposes in *Paez v. State*, 681 S.W.2d 34, 38 (Tex. Crim. App. 1984).

Sergeant Joseph Cadwell, an investigator with the Attorney General's Office received information that Ms. Ortega had twice voted illegally. (4 R. R. 43) Cadwell acquired election records related to Ms. Ortega. Referring to *State's Exhibit 1*, Cadwell testified that on a 2002 Dallas voter application, Ms. Ortega stated she was a U.S. citizen. Referring to *State's Exhibit 4*, Cadwell also included

a statement of citizenship. (4 R. R. 48-49) Referring to *State Exhibit 2*, dated 7 May 2005, Cadwell testified that it contained Ms. Ortega's signature. (4 R. R. 51)

In an email dated, April 8, 2015, Tarrant County Elections officials discussed Ms. Ortega's actions in maintaining on a voter application that she was a U. S. citizen. And that later Ms. Ortega stated to an elections staff member that she was not a citizen. (C. R. 167) The April 8, 2015 email from Ms. Patricia V. Benavides was sent to Hon. Ann L. Diamond, with the Tarrant County District Attorney's Office. (C. R. 167) Well past the time period of this email, Cadwell showed up unannounced at Ms. Ortega's front door, on 8 October 2015. (4 R. R. 61) Cadwell arrived with fellow investigator, Sergeant Wayne Rubio. (4 R. R. 61) Cadwell recorded the interview—admitted at trial as *State's Exhibit 10*. (4 R. R. 62)

In voir dire examination outside the jury's presence, Cadwell conceded that before this interview he had credible information that Ms. Ortega had sent to Tarrant County an application to vote indicating she was not a citizen, and then sent another one five months later that indicated she was a citizen. (4 R. R. 64) Cadwell conceded that he had independently checked Ms. Ortega's status and discovered it to be legal permanent resident, not a citizen. (4 R. R. 65-66, 67) Cadwell had probable cause to arrest Ms. Ortega before he approached her—he

certainly established probable cause in the interview by her series of admissions to his pointed questions.

In Sergeant Joseph Cadwell's testimony he made multiple references to admissions made by Ms. Ortega, obtained in her interview. According to Sergeant Cadwell, in his interview Ms. Ortega admitted the following: her signature claiming U. S. citizenship was on *State's Exhibit 1; h*er signature claiming U. S. citizenship was on *State's Exhibit 2*; her signature claiming U. S. citizenship was on *State's Exhibit 3*; her signature claiming U. S. citizenship was on *State's Exhibit 4*; her signature claiming U. S. citizenship was on *State's Exhibit 5*; her signature claiming U. S. citizenship was on *State's Exhibit 6*; her signature claiming U. S. citizenship was on *State's Exhibit 7*; her signature claiming U. S. citizenship was on *State's Exhibit 8.* (4 R. R. 51, 52, 53, 54, 56-57, 58) Cadwell testified that Ms. Ortega admitted to him in the interview that she was not a U. S. citizen. (4 R. R. 74) Cadwell in referring to *State's Exhibits 14* and *15*, both containing statements of citizenship, stated that Ms. Ortega verified to him that she made those statements. In *State's Exhibit 14*, a document dated October 2014, Ms. Ortega admitted that she marked "no" she was not a citizen. (4 R. R. 80-81)

On *State's Exhibit 15*, dated 19 March 2015, Ms. Ortega marked "yes", that she was a citizen, and she verified this to Cadwell. (4 R. R. 83) In the recorded

interview, Cadwell obtained Ms. Ortega's statement that she knew she was not a citizen. (4 R. R. 84)

Referring to *State's Exhibit 8*, Cadwell testified that in the interview Ms. Ortega admitted her signature appeared on the document and admitted that she voted that day. (4 R. R. 59) So, Cadwell had more than sufficient evidence developed in the interview to constitute probable cause.

Investigator Cadwell conceded that he did not give Ms. Ortega Miranda warnings. (4 R. R. 69) In *Dowthitt v. State*, 931 S.W.2d 244 (Tex. Crim. App. 1996), the Court of Criminal Appeals explained that the determination of custody must be made on an ad hoc basis, after considering all of the (objective) circumstances. *Id*. at 255.

> "…[G]iven our emphasis on probable cause as a 'factor' in other cases, situation four does not automatically establish custody; rather, custody is established if the manifestation of probable cause, combined with other circumstances, would lead a reasonable person to believe that he is under restraint to the degree associated with an arrest."

Id.

"However, the mere fact that an interrogation begins as noncustodial does not prevent custody from arising later; police conduct during the encounter may cause a consensual inquiry to escalate into custodial interrogation." *Id*.

In *Dowthitt* the appellant was interrogated following a failed polygraph. The appellant was not a suspect when he came to the police station but "became one as the interview progressed." *Id*. Eventually the appellant admitted that he was present at the murder, and after that admission, especially in light of his earlier evasions and inconsistencies, the police had probable cause to arrest. *Id*. at 256.

In *Ruth v. State*, 645 S.W.2d 432 (Tex. Crim. App. 1979), the suspect had accompanied the victim to the hospital after the victim had been shot. At the hospital the police asked the suspect what happened, and he replied he would rather not say. The police pressed the suspect to say what happened, and the suspect/appellant stated he shot the victim, but it was an accident. The police continued to question the appellant about the gun, and appellant refused to answer. This refusal was admitted into evidence. The Court of Criminal Appeals held that the appellant was in custody "from the moment he admitted to the shooting, and any subsequent statements were governed by Miranda." *Id*. at 436.

The constitutional error in this case was obviously harmful. Rule 44.2(a) of the Texas Rules of Appellate Procedure provides as follows:

> (a) Constitutional Error. If the appellate record in a criminal case reveals constitutional error that is subject to harmless error review, the Court of Appeals must reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment.

Harm is self-evident given the State extensively utilized in its case-in-chief the oral statements in the recorded interview. In fact, the State presented two witnesses in guilt/innocence, comprising of approximately 100 pages of testimony. Sergeant Cadwell's testimony regarding this interview consumed nearly half of those 100 pages of testimony.

The un-Mirandized incriminatory statements obviously contributed to the conviction. This Honorable Court should reverse and remand.

Point of Error Two

The trial court erred by allowing improper and inflammatory jury argument outside the record. (5 R. R. 180)

Argument and Authorities

Rosa Ortega objected to the State's argument at sentencing. The State argued as follows:

[PROSECUTOR]: "And I just want to throw out one thought to you. You came back with the right verdict, that if you hadn't, if you'd come back with a not guilty, can you imagine the floodgates that would be open to illegal voting in this county?"

(5 R. R. 180)

The trial court overruled Ms. Ortega's objection that the state argument was improper argument. (5 R. R. 180) The State above-objected to argument—that from the ruling by implication received the trial court's stamp of approval—was one of the last statements heard by the jury before rendering the punishment verdict. The reference to "floodgates" in our present-day, highly-charged, political atmosphere over illegal immigration was steeped in prejudice designed to arouse the passion and prejudices of the jury. No person half-aware of present-day politics can deny that illegal immigration is a topic steeped in passionate

disagreement. The prosecutor's reference to "floodgates" squarely placed the society ill will towards illegal immigration on the head of Rosa Ortega, a single individual.

To be permissible, jury argument must fall within one of the following areas: (1) summation of the evidence; (2) reasonable deduction from the evidence; (3) answer to opposing counsel's argument; or (4) plea for law enforcement. *Cantu v. State*, 939 S.W.2d 627, 633 (Tex. Crim. App. 1997). "Improper jury argument constitutes reversible error only if, in the light of the entire record, the argument is extreme or manifestly improper, violates a mandatory statute, or injects into the trial new facts which are harmful to the accused." *Wilson v. State*, 938 S.W2d 57, 59 (Tex. Crim. App. 1996).

> "For many years, the Texas Court of Criminal Appeals has recognized that during jury arguments, prosecutors should refrain from making arguments based upon matters outside the record. Indeed, arguments alluding to information not introduced into evidence are improper and are reversible if they inject or emphasize harmful facts outside the record."

Fant-Caughman, 61 S.W.3d 25, 28 (Tex. App—Amarillo 2001, pet. ref'd).

> "In discussing what constitutes proper jury argument in *Jordan v. State*, 646 S.W.2d 946, 948 (Tex. Crim. App. 1983), the court stated: A prosecuting attorney is permitted in his argument to draw from the facts in evidence all inferences which are reasonable, fair, and legitimate, but he may not use jury argument to get before the jury, either directly or indirectly, evidence which is outside the record. A prosecuting attorney, though free to strike hard blows, is not at liberty to strike foul ones, either directly or indirectly."

Id. at 29.

Arguments that reference matters not in evidence and that may not be inferred from the evidence are usually "designed to arouse the passion and prejudices of the jury and as such are highly inappropriate." *Borjan v. State*, 787 S.W.2d 53, 57 (Tex. Crim. App. 1990).

In *Borjan*, the harmful argument asked the jury to speculate about other crimes defendant may have committed. *Id*. at 57. In *Everett v. State*, the illicit argument implied the existence of other damaging evidence not in the record, 707 S.W.2d 638, 641 (Tex. Crim. App. 1984). *See Guiterrez v. State*, No. 05-12-01278-CR (Tex. App.—Dallas 2014) (not designated for publication) (counsel ineffective for not objecting to prosecutor's repeated statements and arguments that appellant's immigration status meant he was not a candidate for probation, and further that appellant's status and lack of citizenship should be used as an aggravating factor in assessing appellant's punishment.)

This case is in effect much like the error caused by the argument in *Fant-Caughman, above*. In that aggravated sexual assault case in closing argument, in reference to the defense not calling available witnesses, the prosecutor stated that the state "could have been here with witnesses for several more days, because there are a lot of people who know about these allegations." 61 S.W.3d at 28.

The Court of Appeals noted that the State's closing went outside the record four times. As to the cited argument, the Court of Appeals observed that from the jury's perspective, the statement suggested the evidence of guilt was overwhelming by the mere fact that many more people had knowledge of the appellant's actions when in fact there was no such evidence presented.

There another similarity in *Fant-Caughman* to the argument in this record—the prosecutor in *Fant-Caughman* alluded to other people possessing knowledge of guilt, and the prosecutor in this record commending the jury for the "right verdict." (5 R. R. 180)

The trial court overruling the objection put the "stamp of judicial approval" on the improper jury argument, thus magnifying the possibility for harm. *Good v. State*, 723 S.W.2d 734, 738 (Tex. Crim. App. 1986).

The Court of Criminal Appeals has characterized erroneous rulings regarding certain types of improper jury argument as non-constitutional "other errors" within the scope of Rule 44.2(b). *Mosley v. State*, 983 S.W.2d 249, 259 (Tex. Crim. App. 1998). *TEX. R. APP. PROC. 44.2 (b).* If the error had no influence or only a slight influence on the verdict, it is harmless. *Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App. 1998). For claims of non-constitutional error, "a conviction should not be overturned unless, after examining the record as

a whole, a court concludes that an error may have had 'substantial influence' on the outcome of the proceeding." *Burnett v. State*, 88 S.W.3d 633, 637 (Tex. Crim. App. 2002). However, if the reviewing court harbors "grave doubt" the error did not affect the outcome, it must treat the error as if it did. *Motilla v. State*, 78 S.W.3d 352, 358 (Tex. Crim. App. 2002). The United States Supreme Court has defined "grave doubts" to mean "in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error." *O'Neal v. McAninch*, 513 U.S. 432, 435, 115 S.Ct. 992 (1995).

To determine if the State's improper argument affected appellant's substantial rights, the reviewing court looks to three factors: (1) the severity of the misconduct, (2) measures adopted to cure the misconduct, and (3) the certainty of conviction and punishment assessed absent the misconduct. *Mosley, above*, 983 S.W.2d at 259.

In *Fant-Caughman*, the state encouraged the jury to consider that non-appearing witnesses would confirm guilt, while in this case the State encouraged the jury to consider highly prejudicial reference to "floodgates" in the contest of a trial with illegal voting by a non-citizen. The Court found in *Faut-Caughman* where the state he had "a lot" of witnesses who could have been called, that the conduct was severe. The trial court overruled Ms. Ortega, so there were no

measures to cure the misconduct.

As to the certainty of punishment assessed, Ms. Ortega received two concurrent eight (8) year sentences. Ms. Ortega was eligible for probation, and proved her eligibility, so the improper argument cannot be dismissed has having no effect. (C. R. 304-305) (5 R. R. 161)

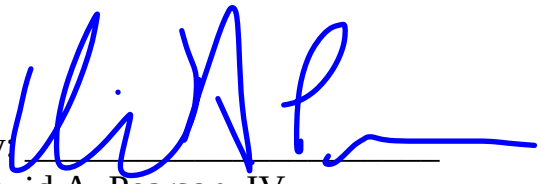
Thus this Honorable Court must reverse and remand for a new hearing on sentencing.

PRAYER

For the reasons set forth herein, Appellant prays this case be reversed and remanded for a new trial, and for such other relief as she may show herself deserving at law or in equity.

Respectfully submitted,

DAVID A. PEARSON, P.L.L.C.



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CERTIFICATE OF SERVICE

I, David A. Pearson, IV, attorney for the Appellant, do hereby certify that a true and correct copy of the above and foregoing Brief of the Appellant has been e-served to Hon. Ali M. Nasser, Office of the Attorney General, P.O. Box 12548, Capitol Station, Austin, TX 78711, (Ali.Nasser@oag.texas.gov) and to Hon. Debra Windsor, Assistant Tarrant County District Attorney, COAAppellateAlerts@TarrantCountytx.com, on this the 11th day of October, 2017, and an efiled-stamped copy will be deposited in first class U.S. mail addressed to:

Ms. Rosa Maria Ortega
Appellant
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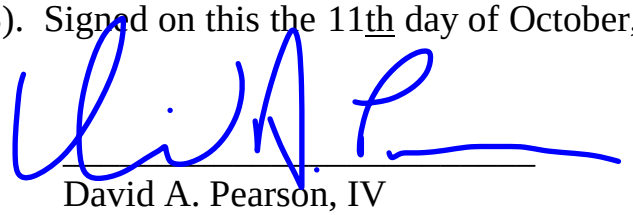
CERTIFICATE OF COMPLIANCE

I hereby certify that in compliance with Tex. R. App. P. 9.4(i)(2)(B), the foregoing document contains 5,006 words, including/~~excluding~~ any parts exempted by Tex. R. App. P. 9.4(i)(2)(B). Signed on this the 11th day of October, 2017.



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