



NUMBER 13-17-00141-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

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RONALD GLENN MARTINEZ,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

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On appeal from the 24th District Court  
of Victoria County, Texas.

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## MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Longoria and Hinojosa  
Memorandum Opinion by Chief Justice Valdez**

A jury found appellant Ronald Glenn Martinez guilty of two counts of aggravated assault with a deadly weapon. See TEX. PENAL CODE ANN. § 22.02(a)(2) (West, Westlaw through Ch. 49, 2017 R.S.). By one issue, Martinez contends that the prosecuting attorney made an improper closing argument warranting a new trial. We affirm.

## I. PERTINENT FACTS<sup>1</sup>

Martinez's defense throughout trial was that the State's witnesses could not identify him with sufficient accuracy to prove beyond a reasonable doubt that he was the assailant. To support this defense, Martinez's counsel posed the following questions to the jury during closing argument: "So what is important in this case? Did anyone see [Martinez at the crime scene] that night? Did they? Reasonable doubt. That's what I'm talking about here. Can anyone be positively sure that [Martinez] was [at the crime scene]?"

During the second half of the State's closing, the prosecutor responded to defense counsel's questions by stating: "*[Defense counsel] says she wants you to be positive. What [defense counsel is] telling you is she wants you to have proof beyond all doubt.*" Defense counsel then objected to the prosecutor's statement, which the trial court overruled.

## II. DISCUSSION

On appeal, Martinez argues that the trial court erred in overruling his objection because the prosecutor's statement, italicized above, was improper.

Proper jury argument generally falls within one of four general categories: "(1) summation of the evidence; (2) reasonable deduction from the evidence; (3) answer to argument of opposing counsel; and (4) plea for law enforcement." *Brown v. State*, 270 S.W.3d 564, 570 (Tex. Crim. App. 2008). We review a trial judge's ruling on an objection to a jury argument for an abuse of discretion. See *Lemon v. State*, 298 S.W.3d 705, 707

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<sup>1</sup> As this is a memorandum opinion, and the parties are familiar with the facts, we will not recite them except as necessary to explain the Court's decision and the basic reasons for it. See TEX. R. APP. P. 47.4.

(Tex. App.—San Antonio 2009, pet. ref'd). An abuse of discretion occurs “only when the trial judge’s decision was so clearly wrong as to lie outside that zone within which reasonable persons might disagree.” *Cantu v. State*, 842 S.W.2d 667, 682 (Tex. Crim. App. 1992).

In overruling defense counsel’s objection, the trial court could have reasonably determined that the prosecutor’s statement fit into the third category of permissible jury argument listed above—i.e., it was made in answer to questions posed by defense counsel regarding the degree of certitude required to convict Martinez. See *Brown*, 270 S.W.3d at 570. Specifically, the trial court could have found that the prosecutor’s statement was made in answer to defense counsel’s suggestion that the jurors had to be “positively sure” that Martinez was the assailant in order to find guilt beyond a reasonable doubt. When understood in this context, the prosecutor correctly reminded the jurors that the State carried the burden to prove its case beyond a reasonable doubt—not beyond all doubt.

On this record, we cannot say that the trial court’s ruling was “so clearly wrong as to lie outside that zone within which reasonable persons might disagree.” *Cantu*, 842 S.W.2d at 682. Therefore, we conclude that the trial court did not abuse its discretion in overruling Martinez’s objection. See *id.* Accordingly, we overrule Martinez’s sole issue on appeal.

### III. CONCLUSION

We affirm the judgment of the trial court.

**/s/ Rogelio Valdez**

ROGELIO VALDEZ

Chief Justice

Do not publish.  
TEX. R. APP. P. 47.2(b).

Delivered and filed this  
10th day of August, 2017.