NO. 01-24-00186-CR

In the

Court of Appeals

For the

First District of Texas

At Houston

Trial Court Cause No. 98469-CR

In the 149th District Court

Brazoria County, Texas

ISAIAH LONGORIA AKA ISIAH LONGORIA,

Appellant

v.

THE STATE OF TEXAS,

Appellee

APPELLANT'S BRIEF

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ORAL ARGUMENT WAIVED

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to **Tex.R.App.P. 39.1 AND 39.7,** Appellant waives oral argument herein since argument would not significantly aid the court in determining the legal and factual issues presented in appeal.

NAME OF ALL PARTIES TO TRIAL COURT'S FINAL JUDGMENT

Pursuant to **Tex.R.App.P. 38.1(a)** a complete list of the names of all interested parties is provided below.

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JESSICA PULCHER, PRESIDING JUDGE OF THE 149TH JUDICAL DISTRICT COURT OF BRAZORIA COUNTY, TEXAS

TABLE OF CONTENTS

PAGE

INDEX OF AUTHORITIES

TEXAS COURT OF CRIMINAL APPEALS CASES: PAGE:

STATUTES:

RULES:

TO THE HONORABLE COURT OF APPEALS:

STATEMENT OF THE CASE

Appellant was charged with the felony offense Aggravated Robbery (CR 6, 30). Appellant entered a plea of not guilty. (3 RR 14). The Jury Disagreed and sentenced him to 13 years in the Texas Department of Criminal Justice Institution Division. (5 RR 228). Appellant timely filed a written notice of appeal. (CR 63).

ISSUES PRESENTED

IV. THERE WAS INSUFFICENT EVIDENCE TO SUPPORT CONVICTION FOR AGGRAVATED ROBBERY

V. THE TRIAL COURT ERRED BY ADMITTING INTO EVIDENCE PLAIN HEARSAY TESTIMONY

VI. THE UNRELIABLE EYEWITNESS TESTIMONY RENDERS THE EVIDENCE INSUFFICIENT TO SUSTAIN APPELLANT'S CONVICTION

STATEMENT OF FACTS

On March 23, 2023, R. Thomas, a paraplegic, was home alone in the Olde Oaks Apartment complex in Clute, Texas. (3 RR 106) R. Thomas states that the lights went black, and he saw someone coming inside. (3 RR 124) Jaylnn came down from the upstairs apartment after hearing him call for help, she called 9-1-1 where R. Thomas spoke to the 9-1-1 operator and at that time, he did not indicate he knew who the alleged perpetrators were. (3 RR 124)

SUMMARY OF ARGUMENT

The evidence is insufficient to support Appellant's conviction for Aggravated Robbery. A review of the record reveals no rational fact finder could have found that the State established, beyond a reasonable doubt, appellant's identity as the robber. The trial court abused its desertion by admitting into evidence testimony by L.H. regarding statements made by A.L. and Appellant, Isaiah Longoria. Said statements amounted to inadmissible hearsay, and the State failed to establish the statements were encompassed by any hearsay exception. Appellant's substantial rights were affected, as this testimony was likely given more weight by the jurors and influenced their verdict.

ARGUMENT AND AUTHORTIES

ISSUE 1: THERE WAS INSUFFICENT EVIDENCE TO SUPPORT A CONVICTION FOR AGGRAVTED ROBBERY.

Standard of Review and Applicable Law

The standard of review to evaluate sufficiency of the evidence in a criminal case is the well-established legal sufficiency standard as set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Brooks v. State*, 323 S.W.3d. 893 (Tex. Crim. App 2010). Thus, in assessing the sufficiency of the evidence, this Court must review all evidence in the light most favorable to the verdict to determine whether

any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Id*.

The ultimate question for this Court is whether the jury's finding of guilt was a rational finding based upon the evidence presented. *Id*. Under the current standard, "only that evidence which is sufficient in character, weight, and amount to justify a fact finder in concluding that every element of the offense has been proven beyond a reasonable doubt is adequate to support a conviction." *Id*. Finally, as the Court of Criminal Appeals has recognized, "it bears emphasizing that a rigorous and proper application of the *Jackson v. Virginia* legal sufficiency 7 standard is as exacting a standard as any factual-sufficiency standard (especially one that is 'barely distinguishable' or indistinguishable from a *Jackson v. Virginia* legal-sufficiency standard)." *Id*. at 907.

Aggravated robbery requires that the person in the course of committing theft of property and with intent to obtain and maintain control of the property, did intentionally and knowingly threaten and place another in fear of imminent bodily injury or death and uses or exhibits a deadly weapon. TEX. PENAL CODE § 29 .02; TEX. PENAL CODE § 29.03.

Appellant, was indicted for Aggravated Robbery in which the State alleged that while in the course of committing theft of property owned by Rayland Thomas, and with intent to obtain or maintain control of said property, intentionally or knowingly threaten or place Rayland Thomas, a disabled person, in fear of imminent bodily injury or death.

A comparison of the indictment to the elements of Aggravated Robbery confirms that the State's allegation is limited to the elements in TEX. PENAL CODE § 29.03(a)(3) and § 29.03(a)(2), which involves the intent to obtain and maintain control of the property, intentionally and knowingly threaten and placing one in fear of imminent bodily injury and death; the use or exhibition of a deadly weapon, or causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is: (a) 65 years of age or older; or (b) a disabled person

There was insufficient evidence to support the jury's conviction of Appellant for Aggravated Robbery. In order to support a conviction of Aggravated Robbery, there must be legally sufficient evidence beyond a reasonable doubt to support a finding that the Defendant (1) while intending to obtain and maintain control of the complaining witnesses property (2) uses or exhibits a deadly weapon; or (3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is: (A) 65 years of age or

older; or (B) a disabled person. Other than the testimony of the victim, there was no other testimony to support a conviction for Aggravated Robbery. Testimony presented showed that the overall appearance of the apartment was disoriented, but R. Thomas room was fairly organized. (3 RR 31). R. Thomas never mentions the use of any weapon.

DIRECT EXAMINATION OF OFFICER A. REEDER BY MR. MARTIN:

Q: Kind of describe for the jury what the apartment looks like.

A: The apartment overall was -- there was -- it was, I would say, decently -- there was things that were disoriented. Things were placed in different areas, dishes all in the sink, laundry in a basket. The room directly to the left when I walked in was -- I would say was disoriented as well. There was just a lot of items everywhere on the floor. Now, as far as Rayland Thomas' room, I would say that it was fairly organized.

The testimony from the record presented in this case shows that there was not legally sufficient evidence to support a conviction of Appellant for Aggravated Robbery.

In order for the jury to have found Appellant guilty all elements of the crime of aggravated robbery would have to be proven beyond a reasonable doubt.

Because the evidence presented in this case is not legally sufficient to prove beyond a reasonable doubt that all the elements were met in this case, the jury was not rationally justified in finding the Appellant guilty of Aggravated Robbery. Accordingly, this conviction of Aggravated Robbery should be reversed, and the Defendant should be acquitted.

ISSUE 2: THE TRIAL COURT ERRED BY ADMITTING INTO EVIDENCE PLAIN HEARSAY TESTIMONY

Standard of Review and Applicable Law

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. TEX. R. EVID. 801 (d). Hearsay testimony is generally inadmissible at *trial except as provided by statute or a hearsay exception*. See TEX. R. EVlD. 802. L.H.'s statements are not admissible under any of the exceptions to the hearsay rule. First, L.H.'s statements do not fall under any of the hearsay exceptions applicable if the declarant is unavailable to testify at trial. See TEX. R. EVID. 804 (hearsay exceptions for unavailable witnesses). Second, L.H.' statements are not covered by excited utterance or present sense impression exceptions. See TEX. R. EVID. 803 (2); 803 (1) (hearsay exceptions when the availability of the declarant is immaterial).

Furthermore, a review of the record reveals that the State failed to respond to the Appellant's hearsay objection and invoke an exception to the hearsay rule. (4 RR 176). Even when a statement may be admissible as an exception to the hearsay rule, it is the burden of the State, as the proponent of the evidence, to relay to the Court the exception that applies. *Moreno v. State*, 858 S.W.2d 453 (Tex. Crim. App. 1993). By admitting the hearsay evidence over appellant's objection, without the

requisite response from the State, the trial court erroneously admitted plain hearsay testimony. *See Dorado v. State*, 843 S.W.2d 37, 38 (Tex. Crim. App. 1992). L.H.'S STATEMENTS DO NOT FALL UNDER THE EXCITED UTTERANCE EXCEPTION TO THE HEARSAY RULE A review of L.H.'s testimony reveals L.H.'s statements fail to meet the requirements of the excited utterance exception as articulated m the Texas Rules of 2O Evidence. Under Rule 803 (2) of the Texas Rules of Evidence, statements relating to a startling event or condition made while an individual was under the stress or excitement caused by an event or condition are excluded from the hearsay rule and admissible at trial. TEX. R. EVlD. 803 (2). This Court addressed the requirements of the excited utterance exception in *Kesaria v. State*. *Kesaria v. State*, 148 S.W.3d 634, 643 (Tex. App. Houston [14th Dist.] 2004, pet. granted). In Kesaria, the defendant sought to have admitted statements made by the victim's wife. Id. at 641. In evaluating the admissibility of the out-of-court statements, this Court held that for an excited utterance exception to apply, three requirements must be shown: (1) the statement must be the product of a startling occurrence that produces a state of nervous excitement m the declarant and renders the utterance spontaneous; (2) the state of excitement must still so dominate the declarant's mind that there is no time or opportunity to contrive or misrepresent; and (3) the statement must relate to the circumstances of the occurrence preceding it. Id. at 642. Moreover, this Court further explained that

the "pivotal memory is whether ’the declarant was still dominated by the emotions, excitement, fear, or pain of the event.’" Id quoting *King v. State*, 953 S.W.2d 266, 269 (Tex. Crim. App. 1997) (quoting *McFarland v. State*, 928 S.W.2d 482, 500 (Tex. Crim. App. 1996) overruled on other grounds by, *Mosley v. State*, 983 S.W.2d 249, 263 (Tex. Crim. App. 1998)). Additionally, this Court stated that while not dispositive, a reviewing court may consider factors such as time elapsed and whether the statement was made in response to a question(s). Kesaria, 148 S.W.3d at 642. In the instant case, the State failed to demonstrate L.H.’s statements, if made, were uttered while she was excited or still in the grip of the shocking event.

The trial court abused its discretion when it admitted into evidence statements allegedly made by A.L. and Appellant, Isiah Longoria, during the testimony of L.H..

DIRECT EXAMINATION OF L.H. BY MR. GOLDEN:

MR. SMITH:
I'm going to object to that line of questioning as being hearsay.
THE COURT:
So you're going to do a general objection to a line of questioning?
MR. SMITH:
Well, I'm just -- once that question was asked and as I was thinking about it, that's hearsay.
THE COURT:
It is hearsay. The question has already been asked --

MR. SMITH:

I know it has, and I would ask for a continued running objection as to that line of questioning.

THE COURT:

No, sir. Each time he asks a question, you can stand up and do a legal objection.

MR. SMITH:

Okay. All right.

THE COURT:

Yes, sir.

Q (By Mr. Golden)

So do you remember him talking with his mother about having a visitation and orchestrating it in such a way that he would be placed next to his cousin, Angel?

MR. SMITH:

Objection; calls for a hearsay response.

THE COURT:

My understanding was he said to his mother. Am I correct that it was the defendant?

MR. GOLDEN:

Yes, Your Honor.

THE COURT:

Overruled.

You may answer.

A :Yes.

Q (By Mr. Golden): You remember that?

A: Yes.

Q: Okay. Did you -- what did you make of that?

MR. SMITH:

Objection; calls for speculation

by the witness, "What did you make of that."

THE COURT:

Overruled as to speculation.

MR. SMITH:

Objection as to relevance.

THE COURT:

Sustained.

Q (By Mr. Golden): But you heard that; correct?

MR. SMITH:

Objection; relevance.

THE COURT:

Overruled.

MR. SMITH:

Okay.

Q (By Mr. Golden): You heard that he was trying to get placed with his cousin; correct?

A: Yes.

Q: Okay. And do you remember him asking you to send a message to his cousin?

A: Yes.

Q: Okay. And was that message keep -- for Angel to keep his mouth shut?

The trial court abused its discretion in admitting this testimony as it amounted to inadmissible hearsay. (4 RR 210-211) Appellant preserved error by properly objecting to the admission of this testimony. (4 RR 100, 110, 114, 170 - 172, 174, 176); See *Kroopf v. State*, 970 S.W.2d 626, 628-29 (Tex.App.--Beaumont 1998, no pet) (following a proper objection, the proponent of otherwise

inadmissible hearsay must establish a legitimate purpose for the admission of the evidence). Nonetheless, the trial court overruled appellant's objection and allowed L.H.'s testimony to be admitted.

ISSUE 3: THE UNRELIABLE EYEWITNESS TESTIMONY RENDERS THE EVIDENCE INSUFFICIENT TO SUSTAIN APPELLANT'S CONVICTION

Standard of Review and Applicable Law

An appellate court reviews challenges to the sufficiency of the evidence applying the same standard of review, a legal sufficiency standard. See *Brooks v. State*, 323 S.W.3d 893, 912, 927-28 (Tex. Crim. App. 2010); see also *Ervin v. State*, 331 S.W.3d 49, 52-55 (Tex .App.--Houston [1st Dist.] 2010, pet. ref'd). Under this standard, first articulated in *Jackson v. Virginia*, evidence is insufficient to support a conviction if, considering all the evidence in the record in the light most favorable to the verdict, no rational fact finder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. See *Jackson v. Virginia,* 443 U.S. 307, 319 (1979); *Brooks*, 323 S.W.3d 893 at 894. An appellate court can hold evidence to be insufficient under the Jackson standard in two circumstances: (1) the record contains no evidence, or merely a "modicum" Of evidence, probative of an element of the offense, or (2) the evidence conclusively establishes a reasonable doubt. See J*ackson*, 443 U.S. at 314, 320.

A person commits robbery if, in the course of committing theft and with intent to obtain or maintain control of the property, that person intentionally, knowingly, or recklessly causes bodily injury to another, or intentionally or knowingly threatens or places another in fear of imminent bodily injury or death,

and he uses or exhibits a deadly weapon. TEX. PENAL CODE ANN. § 29.03 (a)(2) (Vernon 2003). The evidence is wholly insufficient to support appellant's conviction for aggravated robbery. **Specifically, the lack of a positive identification of appellant as the perpetrator on the day of the offense severely undermines the jurors' verdict of guilt.**

Officer A. Reeder testified that during the initial approach of the apartment she had to use a flashlight because there were no outside central flood lights (3 RR 37). Call sheet was entered into evidence, and no perpetrators were named (7 RR 63).

DIRECT EXAMINATION OF OFFICER A. REEDER BY MR. MARTIN:

Q: On the left. Whose apartment is that?

A: That is Apartment 13C belonging to Rayland Thomas.

Q: Now I noticed you're using your flashlight. Was it difficult to see?

A: Yes, sir. There's not much lighting except for by apartment doors.

Q: So there's no, like, central flood light in that courtyard?

A: No, not really, no.

MR. MARTIN: I've stopped it at 2:36 and 15 seconds.

Q: (By Mr. Martin) What are we looking at right now?

A: So right now we're looking at the living room area of Rayland Thomas' apartment.

DIRECT EXAMINATION OF R. THOMAS BY MR. MARTIN:

Q: (By Mr. Martin) Before I do that, Mr. Thomas, you didn't initially tell the 9-1-1 operator who did this; did you?

A: No, sir.

Q: Why not?

A: I was in fear.

Q: What?

A: I was in fear. I was in fear of what may happen if they -- they didn't -- Isiah didn't have no address. Angel, of course, is -- they would have went over there his mother's house with a warrant, Isiah would have knew. So I would have been in fear of something happening to me, me being there by myself. So I didn't expose that to them yet.

Q: So when you called 9-1-1, you didn't tell the 9-1-1 operator that it was Isiah or Angel; did you?

A: No, sir.

Q: But you did -- did you give them a description of them?

A: Yes, sir, part.

Q: Is it your testimony that you didn't tell the 9-1-1 operator who it was because you were afraid of retaliation?

A: Yes, sir.

MR. SMITH: Objection; leading the witness, Your Honor.

THE COURT: Sustained.

MR. SMITH: Ask the jury to disregard any answer that was given.

THE COURT: The jury will disregard the answer to the question.

MR. SMITH: Move for mistrial.

THE COURT: Overruled.

MR. MARTIN: May I publish State's 2?

THE COURT: Yes, sir.

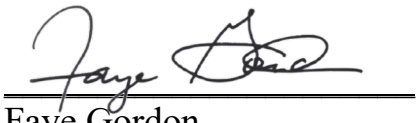
(Playing State's Exhibit No. 2.)

No rational fact finder could have found that the State established appellant's identity as the robber beyond a reasonable. As such, Appellant respectfully requests that this cause be reversed, and an order of acquittal ordered.

PRAYER FOR RELIEF

FOR THESE MANY REASONS, the Appellant respectfully prays that this Honorable Court reverse the Trial Court's ruling that there was sufficient evidence to convict Isaiah Longoria aka Isiah Longoria.

Respectfully submitted,



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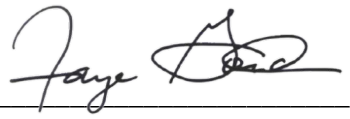
CERTIFICATE OF COMPLIANCE

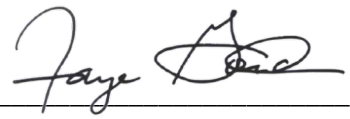
I, Faye Gordon, attorney for Appellant, Isaiah Longoria aka Isaiah Longoria, certify that this document was generated by a computer using Microsoft Word which indicates that the word count of this document for both the cover **pages (3560) and the body text is in 14 point font**, per Tex. R. App. P. 9.4(e), 9.4 (i)(3).



Faye Gordon, attorney for Appellant

CERTIFICATE OF SERVICE

Pursuant to TEX.R.APP.PRO. R. 9.5(a) & (e), I certify that on January 31, 2025, I e-filed of the foregoing Appellant's Brief to the Clerk of the First Court of Appeals and the District Attorney for Harris County, and mailed a copy to Appellant, Isaiah Longoria aka Isiah Longoria in TDC.



Faye Gordon, attorney for Appellant

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