

CAUSE NO. **14-24-00545-CR**

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IN THE COURT OF APPEALS  
FOR THE FOURTEENTH SUPREME JUDICIAL DISTRICT  
AT HOUSTON

FILED IN  
14th COURT OF APPEALS  
HOUSTON, TEXAS  
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LAWRENCE EARL THOMAS

Appellant,

Vs.

STATE OF TEXAS,

Appellee

\_\_\_\_\_  
Appealed from the 248TH District Court  
Of Harris County, Texas  
Cause Number 1783414

\_\_\_\_\_  
**APPELLANT'S BRIEF**  
\_\_\_\_\_

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ORAL ARGUMENT REQUESTED

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PRESIDING JUDGE:	HON. HILARY UNGER 248TH DISTRICT COURT
PROSECUTOR(S):	SEAN MICHAEL KOZAR-KING SBOT NO. 24102043 CAMERON LEE CALLIGAN SBOT NO. 24036307 HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE
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Appellant,

Vs.

STATE OF TEXAS,

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**APPELLANT'S BRIEF**

TO THE HONORABLE FOURTEENTH COURT OF APPEALS:

NOW COMES, LAWRENCE EARL THOMAS, Appellant in the above entitled and numbered cause, files this Appellant's Brief, and would respectfully show the following:

## **STATEMENT OF THE CASE**

This is an appeal from the Trial Court's JUDGMENT OF CONVICTION BY JURY finding Appellant GUILTY of one count of the offense of ENGAGING IN ORGANIZED CRIMINAL ACTIVITY and sentencing him to FIFTY years. (CLRK. REC. – 128). Appellant timely filed a NOTICE OF APPEAL. (CLRK. REC. – 135). The Notice was accepted, and the case was given the above referenced appellate cause number. Appellant has not filed a MOTION FOR NEW TRIAL, an APPLICATION FOR WRIT OF HABEAS CORPUS, or any other original appellate or collateral proceeding in this cause.

## **STATEMENT OF THE FACTS**

The state offered evidence at trial that appellant, Andrew Williams, and Felton Ford robbed Martha Medina. No evidence that the codefendants had participated in, or were suspected of participating in, other robberies, or any other criminal matter, was offered at trial. Dep. Crain defined the term of “bank jugging” as a common criminal pattern whereby a robber identifies a potential victim by waiting outside a bank. (RR.VI – 48-49). He further testified that this particular robbery followed that pattern. (RR.VI – 52-100). There was no evidence of gang membership or that the codefendants were acting in a manner indicative of a common scheme or plan that extended beyond the specific robbery of Martha Medina.

## **STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to Texas Rule of Appellate Procedure 39.7, Appellant hereby requests oral argument. Counsel believes oral argument would serve to emphasize and clarify the important legal points regarding this appeal.

## **ISSUES PRESENTED**

### ***ISSUES FOR REVIEW***

***The evidence admitted at trial was legally insufficient to support a conviction for Engaging in Organized Criminal Activity.***

## **SUMMARY OF THE ARGUMENT**

Appellant asserts that the evidence at trial was legally insufficient to support a conviction for the offense of engaging in organized criminal activity as the evidence submitted merely showed a single instance of aggravated robbery committed by three co-defendants. No evidence of an intent to participate in a criminal combination that extended beyond a single criminal episode was offered aside from the bare assertion that the parties were acting as a “jugging crew.” There was no evidence that the parties had been identified as suspects in other robberies or even that they targeted any individual beside Marth Medina. As such, the state failed to prove engaging in organized criminal activity and this court must issue a judgment of acquittal.



## ARGUMENT AND AUTHORITIES

### *ISSUE FOR REVIEW*

*The trial court erred in finding Appellant's waiver of counsel due to his incompetence.*

### **Engaging in Organized Crime**

The elements of engaging in organized criminal activity are: (1) a person (2) with the intent to establish, maintain, or participate in a combination or in the profits of a combination ... (3) commits ... one or more of the predicate offenses enumerated in the statute (aggravated robbery). See Tex. Penal Code § 71.02(A); *Zuniga v. State*, 551 S.W.3d 729, 735 (Tex. Crim. App. 2018). "Combination" means "three or more persons who collaborate in carrying on criminal activities, although: (1) participants may not know each other's identity; (2) membership in the combination may change from time to time; and (3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations." Tex. Penal Code § 71.01(A).

The "combination" element requires more than the mere intent to commit a predicate offense, a plan to commit a single act, or proof of working jointly to commit a crime-it requires proof of continuity. *Hart v. State*, 89 S.W.3d 61, 63-64 (Tex. Crim. App. 2002); *Nguyen v. State*, 1 S.W.3d 694, 697 (Tex. Crim. App. 1999). The activities do not have to each be criminal offenses to satisfy the statutory requirement, and a single criminal offense can be sufficient. *Id.* However, the statute

requires proof of intended continuity, i.e., that “the appellant intended to ‘establish, maintain, or participate in’ a group of three or more, in which the members intend to work together in a continuing course of criminal activities.” *Id.*

## **The Standard of Review**

Appellate courts review the legal sufficiency of the evidence by considering all the evidence in the light most favorable to the jury’s verdict to determine whether any “rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Its role is that of a due process safeguard, ensuring only the rationality of the trier of fact’s finding of the essential elements of the offense beyond a reasonable doubt. *See Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). Deference is given to the responsibility of the fact finder to fairly resolve conflicts in testimony, weigh evidence, and draw reasonable inferences from the facts. *Williams*, 235 S.W.3d at 750. However, the appellate court is required to “ensure that the evidence presented actually supports a conclusion that the defendant committed” the criminal offense of which he is accused. *Id.*

## Analysis

Appellant asserts that the evidence at trial was legally insufficient to support a conviction for the offense of engaging in organized criminal activity as the evidence submitted merely showed a single instance of aggravated robbery committed by three co-defendants. No evidence of an intent to participate in a criminal combination that extended beyond a single criminal episode was offered aside from the bare assertion that the parties were acting as a “jugging crew.” There was no evidence that the parties had been identified as suspects in other robberies or even that they targeted any individual beside Marth Medina. As such, the state failed to prove engaging in organized criminal activity and this court must issue a judgment of acquittal.

The State charged appellant under the combination theory, alleging that he “with the intent to establish, maintain, or participate in a combination or in the profits of a combination with Andrew Williams (aka John Williams) and Felton Ford, did then and there commit the criminal offense of Aggravated Robbery.” (CLRK. REC.-41). Because the State relied on the combination theory, it was required to prove continuity in the combination in which appellant and at least two other persons intended and “agreed to work together in a continuing course of criminal activities.” *See Nguyen*, 1 S.W.3d at 697. However, an agreement to jointly commit a single crime will not satisfy the requirement to show a combination. *Id.*

To satisfy the continuity element under *Nguyen*, the State must offer evidence to prove that a defendant intended to participate in a continuing course of criminal activity. *Lashley v. State*, 401 S.W.3d 738, 744 (Tex. App.-Houston [14th Dist.] 2013, *no pet.*). The combination's members must be more than temporarily organized. *Id.* Proof of an intent to participate in a criminal combination must extend beyond a single criminal episode, ad hoc effort, or goal, regardless of whether multiple laws were broken within the confines of that episode or effort. *Id.* Even evidence of multiple criminal violations alone does not permit the inference that the members of the group intended to continue working together beyond the completion of an episode or achievement of a goal. *Id.* Evidence must be offered that allows a jury to infer that the group intended to continue engaging in illegality over a period of time. *Id.* at 745.

The state failed to present any evidence that the group intended to continue their scheme, that they had utilized this scheme previously, or that their plan and/or conduct extended beyond the robbery of Martha Medina. The engaging in organized criminal activity statute requires more than proof that the defendants engaged in crime in an organized fashion. The state must provide some evidence to support the inference that the group intended to engage in an ongoing course of conduct in contravention of the law. *Id.* at 745.

Instead, the state provided evidence of a common scheme or plan known to law enforcement and utilized by these defendants to identify targets to rob. That this aggravated robbery was insufficient to support a charge of engaging in organized criminal activity was apparent from the moment it was indicted. The state averred that the combination was organized specifically to rob Medina. As this Court has previously held – the combination's members must be more than temporarily organized to engage in a single criminal episode. *Id.* By its own terms, the indictment places the facts outside the intended charge as the defendants are not engaged in a continuing course of conduct if they are merely organized to rob one person.

This argument is further supported by the facts adduced at trial as Dep. Crain testified that the three had surveyed several locations before settling on robbing Medina. It is therefore inferable that Medina may have been the specific target that the defendants had organized a plan to rob. As such, the continuity requirement is completely absent, and the charge of engaging in organized crime fails. This is because there was no evidence submitted to the jury capable of supporting an inference of continuing criminality sufficient to demonstrate that the defendants had organized for an illegal purpose of greater scope than the robbery of Medina.

ACCORDINGLY, this Court should SUSTAIN Appellant's ISSUE FOR REVIEW; VACATE the Trial Court's JUDGMENT; and enter a new judgment of ACQUITTAL.

## CONCLUSION AND PRAYER

For the foregoing reasons, the Appellant prays that this Honorable Court SUSTAIN Appellant's ISSUES FOR REVIEW; VACATE the Trial Court's JUDGMENT; and enter a new judgment of ACQUITTAL.

Appellant further prays for all relief to which he may be entitled.

Respectfully submitted,



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## **CERTIFICATE OF SERVICE**

This is to certify that on the day of December 20, 2024, a true and correct copy of the above and foregoing Appellant's Brief was served on the HARRIS County District Attorney's Office, through the e-file service system.



TOM ABBATE

## **CERTIFICATE OF COMPLIANCE**

This is to certify that the brief filed in case numbers **14-24-00545-CR** complies with requirement of Tex. R. App. P. Rule 9.4(i)(3). According to the computer program used to prepare the document, the entire brief has the following number words: 2,098 including footnotes.



TOM ABBATE



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