

**TEXAS COURT OF APPEALS, THIRTEENTH DISTRICT, CORPUS CHRISTI–
EDINBURG**

Jessie Jerome White v. the State of Texas

Jessie Jerome White v. State, No. 13-24-00642-CR (Tex. App.—Corpus Christi–Edinburg May 14, 2026) (mem. op.) · No. 13-24-00642-CR · Decided May 14, 2026

OPINION

Jessie Jerome White v. the State of Texas

PER CURIAM.

NUMBER 13-24-00642-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JESSIE JEROME WHITE, Appellant, v. THE STATE OF TEXAS, Appellee.

ON APPEAL FROM THE 24TH DISTRICT COURT

OF JACKSON COUNTY, TEXAS

MEMORANDUM OPINION

Before Chief Justice Tijerina and Justices Cron and Fonseca Memorandum Opinion by Justice Cron Appellant Jessie White, his brother Nelsin Ray White, and Blake Powell were indicted for engaging in organized criminal activity (Count I), a first-degree felony, and the predicate offense of felony theft of property valued at more than \$30,000 but less than \$150,000 from an elderly individual (Count II), a second-degree felony. See TEX. PENAL CODE §§ 31.03(e)(5), (f)(3)(A), 71.02(a)(1). A jury convicted Jessie of Count I and sentenced him to forty-five years' imprisonment. See *id.* § 71.02(a)(1). By what we construe as three issues, Jessie contends: (1) the evidence was insufficient to support his conviction; (2) his trial counsel was ineffective for failing to raise a limitations defense as to Count I; and (3) his counsel was ineffective for failing to suppress cell-site location evidence the State relied on to corroborate Powell's accomplice-witness testimony. Because we agree with Jessie on issue two, we reverse and remand.

I. BACKGROUND

This case involves a tractor theft that occurred on October 2, 2018. The original indictment was filed against the Whites and Powell on March 25, 2020, and the State filed a superseding indictment on May 3, 2024. The superseding indictment does not contain tolling language, and although the similarities and differences between the two indictments will be discussed in greater detail below, we note for context that the superseding indictment identified six other members of the alleged combination, none of whom were indicted in this case. The Whites were tried together, and Powell testified against the brothers as an accomplice witness. The following evidence was adduced at trial, which began on October 1, 2024. On October 2, 2018, at approximately 3:21

p.m., George Weldon Burt called 911 to report that his John Deere tractor had been stolen from his property on the outskirts of La Ward, a city in Jackson County later described by one witness as “a very rural environment.” Burt confirmed at trial that he did not give anyone permission to take his tractor, which he said cost “in the vicinity of 70 something thousand dollars” when he purchased it. Burt’s insurance carrier paid him \$52,323.24 for the loss. 2 Deputy Christopher Marlow with the Jackson County Sheriff’s Office (JCSO) responded to the call. He interviewed two witnesses, Thomas Roberts and Dan Schicke. Roberts was working outside a few hundred yards down the street from Burt’s property, and Roberts described to the jury what he observed that day. Between 11:00 a.m. and 12:00 p.m., he saw a white four-door car park along State Highway 172 across from Burt’s property. Two people exited the vehicle and crossed the highway toward Burt’s property. Roberts also observed a pickup truck pulling an empty trailer park near Burt’s property. Roberts described the color of the truck as “bluish purple” at trial, but he described it as “white” to Deputy Marlow on October 2, 2018. One of the occupants from the car “jumped on the tractor,” started it, and loaded it onto the trailer while two other people stood lookout. Once the tractor was loaded, “they took off” without securing the tractor to the trailer. The two vehicles then proceeded southbound on State Highway 172. On the day in question, Roberts told Deputy Marlow that the person who drove the tractor onto the trailer was a “medium build Mexican” with “dark skin.” At trial, he described the same person as “dark skinned” but said he could not tell what ethnicity the man was. Roberts could not explain why he described the person as “Mexican” on October 2, 2018, but he agreed that the men were “about 360 yards” away from him at the time. The record reflects that Nelsin and Jessie are African American. Schicke, Burt’s neighbor, also observed the incident, but he passed away before trial. He was able to record the truck’s license plate number and reported it to police. Jeremy Crull, then working for JCSO, was the lead detective on the case. Detective Crull testified that he “ran that license plate through a vigilant license plate reader number,” 3 which indicated the vehicle, a “white” Chevrolet Silverado, was registered to Powell and his wife. Detective Crull interviewed Powell at the Fort Bend County Sheriff’s Office, along with two investigators from that department. Those investigators, Detectives Hatfield and Carter, were investigating “similar crimes” that “involve[d] the same people,” according to Detective Crull. Detective Crull testified that the Whites had been identified as suspects in residential burglaries in Jackson County, as well as “similar offenses” that occurred “in Fort Bend County, Wharton County, several counties.” He further testified that other investigators with JCSO developed evidence that the Whites were part of a “crime ring” that “[i]nvolved a large group of suspects” committing vehicle thefts and burglaries in seven counties. According to Detective Crull, a license plate reader placed Powell’s vehicle on some unspecified date “in [the] area of Seabourne Meadows,” which is “near the residence of Jessie or Nelsin White” in Fort Bend County. Powell told Detective Crull during the interview that the Whites had hired him to haul Burt’s tractor that day. Powell, an accomplice witness as a matter of law, testified that he was an out-of-work tow truck driver living in Sugar Land when he met the Whites at a Super Bowl party

in 2018. According to Powell, Nelsin lived in Seabourne Meadows, a neighborhood in Rosenberg, which is in Fort Bend County, and Jessie lived in Needville, another city in Fort Bend County. Powell testified that he “pulled tractors” for Nelsin and Jessie “seven or eight times,” including “a tractor from the La Ward area.” The Whites typically paid Powell “[b]etween two and five hundred [dollars]” in “[c]ash” for each job. He said that each occurrence played out in a similar fashion: beforehand, the three men would “steal” a trailer and attach it to Powell’s pickup; later, the Whites, each in their own vehicle, would lead Powell to the location of a tractor; once there, the Whites would quickly load the tractor onto the trailer and strap it down; and finally, the Whites would escort Powell to a new location where the Whites would sell the “stolen” trailer and tractor to a prearranged buyer. For instance, Powell recalled hauling one tractor to a gas station in Victoria and the Whites selling the trailer and tractor to men “driving a white Dodge.” Powell said that, because the men would drive separate vehicles, they used cell phones to communicate, and for as long as he had known the Whites, each maintained the same cell phone number. As to the predicate offense, Powell recalled that on October 2, 2018, the three men loaded Burt’s tractor in La Ward, Powell hauled the tractor to a Citgo gas station on State Highway 35 along the Texas Gulf Coast, the Whites sold the trailer and tractor to some “Hispanic men,” the three men then drove to a friend’s house in Rosenberg, and Powell was paid “\$400.” Detective Crull testified that, after Powell implicated the Whites, he used “a law enforcement database” called “TLO” to identify cell phone numbers associated with Nelsin and Jessie. He obtained a search warrant to seize thirteen different categories of electronic consumer data, including cell-site location data, for each phone number from October 1, 2018, to October 3, 2018. Each search warrant application was supported by an affidavit from Detective Crull, and unsigned copies of both applications and supporting affidavits were admitted into evidence at trial without objection. JSCO hired a third party, the Regional Organized Crime Information Center (ROCIC), to analyze the data produced by the two carriers, AT&T and Sprint, and according to Detective Crull, “the cell tower 5 locations or the cell phone locations during the time of the offense” corroborated Powell’s account. Angela Gardner, a “criminal intelligence analyst” with ROCIC, analyzed the electronic consumer data produced by the carriers. Specifically, JCSO requested ROCIC to perform “Cell Tower Mapping” for the two data sets, with a focus on October 2, 2018. She testified about her findings without objection. Gardner explained that when a person uses cellular data to operate their cell phone, it sends a signal that is typically received by the closest cell phone tower, and this activity, including the location of the tower, is recorded by the carrier. Based on her analysis of the data sets, which she limited to incoming and outgoing calls and texts, Gardner was able to produce maps tracking the general movements of the two cell phones as they were used on October 2. These maps, which were admitted into evidence without objection, generally show the two cell phones near the brothers’ respective residences that morning; then traveling southwest along U.S. Highway 59; turning south onto State Highway 172 and arriving in “the La Ward area” before noon; continuing south to State Highway 35; traveling along State Highway 35, including near the Citgo gas

station; turning north to return to State Highway 59; and ending near the brothers' residences that evening. Gardner agreed that, during this period, the two cell phones were "in roughly the same location at the same times throughout" the day. Gary Smejkal, a reserve deputy with JCSO, testified that he investigated a series of burglaries in Jackson County that occurred in 2016 and that allegedly involved the Whites and "some" of the other people alleged to be members of the combination in this case. Deputy Smejkal testified that his investigation resulted in separate indictments against the Whites, Lloyd Miller, and Dennis Rivers for engaging in organized criminal activity that remained pending at the time of trial. He also confirmed that the Texas Department of Criminal Justice (TDCJ) had identified Rivers as a member of a criminal street gang "that goes by the name of 59 PIRU or 59 Bounty Hunter Bloods." The Whites objected at various times during this line of questioning, and the trial court overruled most of the objections. The trial court generally agreed with the State that evidence of the Whites' prior crimes was probative of whether the Whites committed the predicate theft with intent to maintain or participate in a combination or as members of a criminal street gang. Deputy Smejkal also testified that through his investigation, he obtained the cell phone numbers for Nelsin and Jessie, and these numbers were passed along to Detective Crull to aid him in his 2018 investigation. For instance, Jessie's number was included in a "book-in report" when Jessie was previously arrested and detained in the Jackson County jail. Finally, Jason McCarrell testified that he "worked for [JCSO] from 2006 until 2017" and was involved in the 2016 investigation. The State read the names of each person alleged in the superseding indictment to be part of the combination in this case and asked whether "some of those people" formed a combination to commit the burglaries in 2016. McCarrell responded, "Yes, they were." He also said that Miller "admitted to being a member of [59 PIRU or Bounty Hunter Bloods] during an interview" and that TDCJ confirmed Rivers' membership in the same gang. He said that Miller "minimized" the Whites' involvement in the 2016 burglaries. However, without objection, McCarrell later testified that he determined through his investigation that Nelsin and Jessie were involved in the 2016 burglaries and that he was aware that a separate case against them was set for trial later that year. He "[a]bsolutely" agreed that, although "2016 is a different year than 2018," "continuing crimes or criminal activity, can . . . stretch for a number of years." Finally, during cross examination, McCarrell acknowledged that Jessie had never been confirmed as a member of 59 PIRU or the Bounty Hunter Bloods. As to the evidence concerning the 2016 burglaries, the State emphasized during closing arguments that "members of the combination can change over time" and "[t]hat is why you heard about other crimes." The State continued, "Why did you hear about possible other engaging? Because I got to show criminal activities. Criminal activities. Okay? And that's all the other stuff that they were involved in. All right?" The State also asked the jury to find that the Whites had committed the predicate offense as members of a criminal street gang: "If it's not a combination, it could be a criminal street gang. You heard about one, and some of the members being involved [in a gang]." The State suggested that the jury could infer that the Whites are members of a gang because

“[b]irds of a feather flock together.” The State also explained that the jury did not have to be unanimous on the manner and means “[a]s long as twelve people believe at least one of these has been proved beyond a reasonable doubt.” The State revealed that it included the gang allegation in the superseding indictment “to cast as wide a net as possible because everybody might see it a little bit different.” At the close of evidence, the State abandoned Count II of the indictment, and the jury found Nelsin and Jessie guilty of engaging in organized criminal activity while committing the predicate offense of felony theft. 1 The jury also found that Burt was an elderly individual, as alleged in the indictment. Finally, during the punishment phase, the jury found that Jessie was a habitual felony offender and sentenced him to forty-five years’ incarceration. Jessie filed a motion for new trial arguing, among other things, that his trial counsel was ineffective for failing to raise a limitations defense to Count I of the superseding indictment. Trial counsel testified at a hearing on the matter that he was appointed in “February of 2024” and was “the third attorney on this case.” Trial counsel disagreed with Jessie’s appellate counsel that the superseding indictment “required tolling language,” saying, “To my knowledge, no.” The State sent trial counsel a copy of its response to the motion for new trial, and counsel confirmed that he reviewed it prior to the hearing. Trial counsel adopted the State’s position, agreeing that the original indictment tolled limitations because the superseding indictment did not “broaden or substantially amend the allegations made in the” original indictment. Trial counsel explained that he reached this conclusion because “Count 1 on both of them were engaging and Count 2 was theft.” Given this conclusion, trial counsel also agreed with the State that filing a motion to quash the superseding indictment based on the absence of tolling language would have been pointless because “the State would have corrected it” through an amended indictment. 1 The State elected to abandon Count II based on the belief that a conviction for the predicate offense would be “subsume[d]” by a conviction for engaging in organized criminal activity. We note that the Double Jeopardy Clause does not prohibit multiple punishments in a single prosecution for engaging in organized criminal activity and its underlying predicate offense. *Garza v. State*, 213 S.W.3d 338, 352 (Tex. Crim. App. 2007). 9 The trial court denied the motion by written order, which included specific “findings” that trial counsel was not ineffective for failing to raise a limitations defense because the superseding indictment “did not broaden or substantially amend[] the preceding allegations in the [original] indictment,” and the original indictment therefore tolled limitations with respect to Count I. The trial court concluded that any motion to quash the superseding indictment because it lacked tolling language “would only delay trial,” rather than change the outcome. This appeal followed.

II. SUFFICIENCY

Jessie first complains that the evidence was insufficient to support his conviction because the State failed to prove that he committed the predicate offense as a member of a combination. 2 The only evidence the State offered to show a continuing course of criminal activity, according to Jessie, was his alleged involvement with a completely separate crime ring that committed a series of

offenses two years prior to the predicate offense in this case. He also contends that the State failed to sufficiently corroborate Powell's accomplice witness testimony because the non-accomplice evidence merely places him near the crime scene. A. Standard of Review To satisfy constitutional due process requirements, a criminal conviction must be supported by sufficient evidence. *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009). "Evidence is sufficient to support a criminal conviction if a rational jury could find 2 Jessie also argues that the evidence was insufficient to show that he committed the predicate offense as a member of a criminal street gang. Given our disposition, we do not reach this sub-issue concerning the State's alternative theory of the case. See TEX. R. APP. P. 47.1 10 each essential element of the offense beyond a reasonable doubt." *Stahmann v. State*, 602 S.W.3d 573, 577 (Tex. Crim. App. 2020) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In conducting a sufficiency review, we view the 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 crime beyond a reasonable doubt. *Zuniga v. State*, 551 S.W.3d 729, 732 (Tex. Crim. App. 2018). We assume that the trier of fact resolved conflicts in the testimony, weighed the evidence, and drew reasonable inferences from the evidence in a manner that supports the verdict. *Id.* "We may not re-weigh the evidence or substitute our judgment for that of the factfinder." *Id.* We consider all the evidence in the record, regardless of whether the evidence was properly or improperly admitted. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). Direct evidence and circumstantial evidence are equally probative, and circumstantial evidence alone can be sufficient to establish guilt. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). We measure the sufficiency of the evidence against "the elements of the offense as defined by the hypothetically correct jury charge for the case." *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). A hypothetically correct charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or restrict its theories of liability, and adequately describes the particular offense for which the defendant was tried. *Id.* A person engages in organized criminal activity "if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more 11 [predicate offenses, including theft]." TEX. PENAL CODE § 71.02(a)(1). 3 A "combination" is "three or more persons who collaborate in carrying on criminal activities." *Id.* § 71.01(a). "A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense." TEX. CODE CRIM. PROC. art. 38.14. In the jury charge, Powell was declared an accomplice witness as a matter of law, and the jury was instructed on the application of the accomplice-witness rule. See *Smith v. State*, 332 S.W.3d 425, 439 (Tex. Crim. App. 2011) ("A witness who is indicted for the same offense or a lesser-included offense as the accused is an accomplice as a matter of law."). In conducting a sufficiency review where the accomplice-witness rule applies, we "eliminate the accomplice

testimony from consideration and then examine the remaining portions of the record to see if there is any evidence that tends to connect the accused with the commission of the crime.” Solomon v. State, 49 S.W.3d 356, 361 (Tex. Crim. App. 2001). “The corroboration requirement in Article 38.14 does not apply separately to each element of the offense charged or to each aspect of the accomplice’s testimony. If that were so, there would be no value in the testimony at all.” State v. Ambrose, 487 S.W.3d 587, 598 (Tex. Crim. App. 2016). “Rather, the evidence must simply link the accused in some way to the commission of the crime and show that rational jurors could conclude that this evidence sufficiently tended to connect the accused to the offense.” 3 Throughout this memorandum opinion, we are citing the version of section 71.02 in effect at the time of the alleged offense. See Act of May 26, 2015, 84th Leg., R.S., ch. 333, § 16, sec. 71.02, 2015 Tex. Gen. Laws 1508, 1516 (amended 2019, 2021, 2023, 2025) (current version at TEX. PENAL CODE § 71.02). 12 Malone v. State, 253 S.W.3d 253, 257 (Tex. Crim. App. 2008) (citation modified). “While the accused’s mere presence in the company of the accomplice before, during, and after the commission of the offense is insufficient by itself to corroborate accomplice testimony, evidence of such presence, coupled with other suspicious circumstances, may tend to connect the accused to the offense.” Dowthitt v. State, 931 S.W.2d 244, 249 (Tex. Crim. App. 1996). The tends-to-connect standard does not present a high threshold as the “evidence need not prove the defendant’s guilt beyond a reasonable doubt by itself.” Solomon, 49 S.W.3d at 361. “Even apparently insignificant incriminating circumstances may sometimes afford satisfactory evidence of corroboration.” Dowthitt, 931 S.W.2d at 249. Each case is fact specific, and corroboration may be shown through direct or circumstantial evidence. Smith, 332 S.W.3d at 442. As with any sufficiency review, “when there are conflicting views of the evidence—one that tends to connect the accused to the offense and one that does not—we will defer to the factfinder’s resolution of the evidence.” Id. B. Discussion We disagree with Jessie that the State’s case rested on proving that the commission of the predicate offense was a continuation of his alleged involvement in a separate and unrelated crime ring. Powell’s testimony that he, Nelsin, and Jessie committed a total of “seven or eight” tractor thefts was legally sufficient to establish that the three men committed the predicate offense with the intent to maintain their own combination. See TEX. PENAL CODE § 71.02(a)(1); Hernandez v. State, 585 S.W.3d 537, 547–48 (Tex. App.—San Antonio 2019, pet. ref’d) (“Under the Jackson v. Virginia 13 sufficiency standard, uncorroborated accomplice witness testimony ‘can be sufficient to support a conviction.’” (quoting Taylor v. State, 10 S.W.3d 673, 684 (Tex. Crim. App. 2000))). We also conclude that the State satisfied the accomplice-witness rule. Viewed in the light most favorable to the verdict, the non-accomplice evidence establishes that the Whites were with Powell before, during, and after the commission of the predicate offense, including at the crime scene. Specifically, the cell-site location evidence placed the Whites near the “very rural” crime scene around the time of the offense; Roberts observed two vehicles park near Burt’s property immediately before the commission of the offense; Schicke recorded the license plate number of the truck used to tow Burt’s tractor, which

ultimately established that Powell's vehicle was used during the commission of the offense; Roberts observed the two vehicles drive away from the crime scene, heading the same direction on Highway 172; and the cell-site location evidence placed the Whites near the location where the stolen tractor was allegedly sold later that day. Cf. *Johnson v. State*, 682 S.W.3d 638, 650 (Tex. App.—Tyler 2024, pet. ref'd) (finding evidence legally sufficient to support conviction for aggravated robbery where appellant's identity was established primarily through circumstantial cell-site location evidence). Because Jessie's mere presence with Powell before, during, and after the commission of the offense is not sufficient to corroborate Powell's testimony, we look to see if there were other suspicious circumstances connecting Jessie to the offense. See *Dowthitt*, 931 S.W.2d at 249. Although Roberts was standing too far away to positively identify the three occupants of the two vehicles and gave conflicting accounts about the ethnicity of one of the occupants, he was unequivocal that all three actively participated in the commission of the offense. Roberts described how one occupant quickly loaded the tractor onto the trailer while the other two stood lookout, and how both vehicles then fled the scene in the same direction. We conclude that the combined and cumulative force of the foregoing evidence was sufficient to corroborate Powell's testimony because it "tended to connect" the Whites to the offense. See *Malone*, 253 S.W.3d at 257. Jessie's first issue is overruled.

III. UNRAISED LIMITATIONS DEFENSE

Jessie next argues that his trial counsel was ineffective for failing to raise a limitations defense to Count I because: (1) the superseding indictment was filed outside the limitations period; (2) the superseding indictment lacked tolling language; and

(3) tolling language would not have saved the superseding indictment because it substantively amended the charges brought in the first indictment by alleging an additional manner and means of committing the offense. 4 A. Standard of Review "Appellate issues involving claims brought in a motion for new trial are really challenges to the trial court's ruling on the motion." *Cueva v. State*, 339 S.W.3d 839, 856 (Tex. App.—Corpus Christi–Edinburg 2011, pet. ref'd). We generally review the denial of a motion for new trial for an abuse of discretion standard. *Najar v. State*, 618 S.W.3d 366, 371 (Tex. Crim. App. 2021). "As for questions of law raised in connection with a motion 4 Jessie does not dispute that the original indictment tolled limitations as to Count II. 15 for new trial, we review a trial court's decisions on such questions de novo but uphold its ultimate ruling under any applicable theory of law supported by the facts of the case." *Masterson v. State*, 706 S.W.3d 468, 475 (Tex. App.—Austin 2024, no pet.) (citing *Briggs v. State*, 560 S.W.3d 176, 184 (Tex. Crim. App. 2018)). Appellate courts review de novo "application of law to fact questions" that do not turn on an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). Whether an indictment is barred by the statute of limitations is a question of law we review de novo. *Martinez v. State*, 527 S.W.3d 310, 322 (Tex. App.—Corpus Christi–Edinburg 2017, pet. ref'd). "A trial court abuses its discretion if it misinterprets or misapplies the law." *Ex parte L.M.W.*, 578 S.W.3d 191, 194 (Tex.

App.—Tyler 2019, no pet.). The right to reasonably effective assistance of counsel is enshrined in both the United States Constitution and the Texas Constitution. See U.S. CONST. amend. VI; TEX. CONST. art. I, § 10; see also TEX. CODE CRIM. PROC. art. 1.051. To establish an ineffective assistance claim, the appellant must first demonstrate, “by a preponderance of the evidence, that trial counsel’s performance fell below an objective standard of reasonableness under the prevailing professional norms.” *Lopez v. State*, 343 S.W.3d 137, 142 (Tex. Crim. App. 2011). A single egregious error may constitute ineffective assistance as a matter of law, but we generally disregard isolated errors that are not indicative of the overall representation. *Id.* at 143. Counsel’s failure to timely raise a meritorious limitations defense can support an ineffective assistance claim. *Compton v. State*, 202 S.W.3d 416, 421 (Tex. App.—Tyler 2006, no pet.). 16 To establish ineffective assistance of counsel for failure to file a motion with the court, a defendant must demonstrate that he would have succeeded on the motion. *Jackson v. State*, 973 S.W.2d 954, 957 (Tex. Crim. App. 1998). “Counsel’s performance will be measured against the state of the law in effect during the time of trial and we will not find counsel ineffective where the claimed error is based upon unsettled law.” *Ex parte Chandler*, 182 S.W.3d 350, 359 (Tex. Crim. App. 2005) (citation modified). Conversely, “ignorance of well-defined general laws, statutes and legal propositions is not excusable and such ignorance may lead to a finding of constitutionally deficient assistance of counsel.” *Ex parte Lane*, 670 S.W.3d 662, 671 (Tex. Crim. App. 2023) (citation modified). Yet, even if the performance was deficient, the judgment will not be set aside unless counsel’s error had a prejudicial effect on the outcome. *Strickland v. Washington*, 466 U.S. 668, 691 (1984). The test for prejudice requires the defendant to show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *Id.* at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* B. Applicable Law

1. Engaging in Organized Criminal Activity

A person commits theft if they take property without the owner’s consent and with intent to deprive the owner of the property. TEX. PENAL CODE § 31.03(a). As noted, a person engages in organized criminal activity “if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more [predicate offenses, 17 including theft].” *Id.* § 71.02(a)(1). Thus, to establish participation in a combination, the State must prove “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.” *Nguyen v. State*, 1 S.W.3d 694, 697 (Tex. Crim. App. 1999) (citation modified). “The combination’s members must be more than temporarily organized to engage in a single criminal episode.” *Lashley v. State*, 401 S.W.3d 738, 744 (Tex. App.—Houston [14th Dist.] 2013, no pet.). “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. A “criminal street gang” is defined as “three or more persons having a common

identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.” TEX. PENAL CODE § 71.01(d). To establish that a defendant committed a predicate offense “as a member of a criminal street gang,” the State must prove “that the defendant was acting in the role, capacity, or function of a gang member at the time of the offense.” *Zuniga v. State*, 551 S.W.3d 729, 736 (Tex. Crim. App. 2018) (citation modified). “To satisfy this requirement, the evidence need only be sufficient to show some nexus or relationship between the commission of the underlying offense and the defendant’s gang membership.” *Id.* at 739. There is also a “distinction between engaging based upon a conspiracy and engaging based upon commission.” *O’Brien v. State*, 544 S.W.3d 376, 392 (Tex. Crim. App. 2018). These “are two means of engaging in organized criminal activity” that require different proof. *McIntosh v. State*, 52 S.W.3d 196, 199 (Tex. Crim. App. 2001) (“To commit 18 the offense by the first means, the defendant commits one or more of the enumerated offenses with the requisite intent. The second means allows conviction if the accused conspires to commit the object offense and an overt act is committed by the accused and another member of the combination.” (citation modified)). Looking to the purpose of the statute, “the focus is on the creation of crime rings that result from the pursuit of a collective and continuous course of criminal behavior.” *O’Brien*, 544 S.W.3d at 388. Consequently, “the gravamen of the offense of engaging in organized criminal activity is the circumstance surrounding the conduct.” *Id.* at 391.

2. Limitations Defense

For felonies subject to a statute of limitations, the indictment must be presented within the limitations period, and the State’s failure to do so acts as an absolute bar to prosecution if properly raised. See TEX. CODE CRIM. PROC. art. 12.01; *Ex parte Smith*, 178 S.W.3d 797, 802 (Tex. Crim. App. 2005) (“Limitations is an absolute bar to prosecution.”). However, as a defense to prosecution, it “is forfeited if not asserted at or before the guilt/innocence stage of trial.” *Proctor v. State*, 967 S.W.2d 840, 844 (Tex. Crim. App. 1998). An indictment must indicate, on its face, that the prosecution is not barred by the applicable statute of limitations. TEX. CODE CRIM. PROC. art. 21.02(6) (“The time mentioned must be some date anterior to the presentment of the indictment, and not so remote that the prosecution of the offense is barred by limitation.”). “The time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation.” *Id.* art. 12.05(b). If the State wishes to rely on tolling under section 12.05(b), 19 it must plead “tolling facts” in the superseding “indictment itself, so that the indictment will indicate on its face that a prosecution thereunder is not barred by the applicable statute of limitations.” *Tita v. State*, 267 S.W.3d 33, 37–38 (Tex. Crim. App. 2008). But “not just any indictment will toll the statute of limitations.” *State v. West*, 632 S.W.3d 908, 911 (Tex. Crim. App. 2021). Because an indictment “must give adequate notice to prepare a defense,” the Texas Court of Criminal Appeals has explained that “a subsequent indictment is barred by the statute of limitations if it broadens or substantially amends the charges in the original indictment.” *Id.* (citation modified). On the other hand, “a prior indictment tolls the statute of limitations for a

subsequent indictment when both indictments allege the same conduct, same act, or same transaction.” Id. (citation modified). The key inquiry, then, is whether the initial indictment “provided the type of clear notice necessary to identify and preserve the facts and witnesses essential to defend against the subsequent indictment.” Id. at 914. Whether an indictment is barred by the statute of limitations is a question of law we review de novo. *Martinez v. State*, 527 S.W.3d 310, 322 (Tex. App.—Corpus Christi—Edinburg 2017, pet. ref’d). “The limitation period for criminal conspiracy or organized criminal activity is the same as that of the most serious offense that is the object of the conspiracy or the organized criminal activity.” TEX. CODE CRIM. PROC. art. 12.03(b). The limitations period for felony theft is “five years from the date of the commission of the offense.” Id. art. 12.01(4)(A). 20 C. The Indictments As relevant here, the original indictment, presented on March 25, 2020, alleged that: JESSIE JEROME WHITE, on or about the 2nd day of October, A.D., 2018, and before the presentment of this indictment, in said County and State, did then and there

COUNT 1

with the intent to establish, maintain, or participate in a combination or in the profits of a combination, the combination consisting of the defendant, JESSIE JEROME WHITE, Nelsin Ray White, and Blake Matthew Powell, who collaborated in carrying on the hereinafter described criminal activity, conspire to commit the felony offense of Theft of Property by agreeing with each other that they would engage in conduct that constituted the offense, and the defendant performed an overt act in pursuance of the agreement, to-wit: the defendant, JESSIE JEROME WHITE, as a principal or party as defined by Section 7.01 or Section 7.02 of the Texas Penal Code did then and there unlawfully appropriate, by acquiring or otherwise exercising control over, property, to-wit: a John Deere Tractor and a John Deere front end loader, of the value of \$30,000 or more but less than \$150,000, from George Weldon Burt, the owner thereof, without the effective consent of the owner, and with intent to deprive the owner of the property. The superseding indictment, presented on May 3, 2024, included the following allegations with respect to Count I:

NELSIN RAY WHITE, JESSIE JEROME WHITE, BLAKE MATTHEW

POWELL, as members of a criminal street gang, or a criminal combination, before the presentment of this indictment, on or about the 2nd day of October 2018, in said Jackson County and State of Texas, did then and there, commit two or more offenses, pursuant to the same transaction; or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or the offenses are the repeated commission of the same of similar offenses; namely: COUNT 1 – Engaging in Organized Criminal Activity

1. As a member of a criminal street gang, to-wit: “59 PIRU” or “Bounty Hunter Blood,” OR 21

2. With the intent to establish, maintain or participate in a combination,
OR

3. With the intent to participate in the profits of a combination,

4. Said combination consisting of Nelsin Ray White, Jessie Jerome

White, Blake Matthew Powell, Dennis Lee Rivers, Latrice Gail Miller- Rivers, Lloyd Dean Miller, Erik Devay Jackson, Ronald Hookfin Jr., Brian James Kaminsky, and other persons unknown to the grand jurors,

5. The defendant did commit Theft, OR

6. The defendants did conspire to commit Theft, such conspiracy to

commit consisting of: a. Agreeing with one or more combination members to engage in Theft, AND b. The defendant and one or more other combination members, each performed an overt act, to-wit:

(1) Identify and locate property to be appropriated,

(2) Rendezvous with combination members in the vicinity of the target property,

(3) Conduct surveillance of the target property,

(4) Provide look-out during the unlawful appropriation,

(5) Operate and [l]oad the unlawfully appropriated property for transport,

(6) Transport the unlawfully appropriated property away from [the] location,

(7) Coordinate the sale of [the] unlawfully appropriated property, and

(8) Sale [sic] the unlawfully appropriated property[.]

22 D. Discussion Jessie claims that his trial counsel was constitutionally deficient because it was apparent from the face of the two indictments that he had a meritorious limitations defense to Count I, and yet his counsel failed to timely raise the defense in a motion to dismiss Count I of the superseding indictment. He correctly notes that the superseding indictment was presented seven months after the five-year statute of limitations expired on Count I and lacked tolling language referring to the original indictment. See *id.* arts. 12.01(4)(A), 12.03(b); *Tita*, 267 S.W.3d at 38 (explaining that “an indictment must indicate on its face that a prosecution thereunder is not barred by the applicable statute of limitations and that an indictment that does not indicate such is subject to a pretrial motion to dismiss”). Jessie further argues that the superseding indictment could not be cured with an amended indictment containing tolling language because the original indictment failed to give him notice of the allegations in the superseding indictment, which, according to Jessie, substantially expanded the manner and means of committing the offense of engaging in organized criminal activity. He points out that, unlike the original indictment, which only alleges that he conspired to commit the predicate offense by forming a combination with his brother and Powell, the superseding indictment additionally alleges that he committed the theft to maintain a much larger combination that allegedly committed a series of crimes in 2016. Jessie concludes that his trial counsel’s representation fell below an objective standard of reasonableness

by forfeiting his meritorious limitations defense to the most serious offense charged, an omission that resulted in his conviction for that offense and a forty-five-year sentence. 23 The State responds that the original indictment “clearly” tolled limitations because it included the “same offense of [engaging in organized criminal activity], involving the same listed co-conspirators, on the same date of offense, and [was] predicated on the same underlying theft.” Building on this premise, the State contends that Jessie’s trial counsel “should not be held ineffective for failing to perform the useless act of seeking to quash a subsequent indictment that could so easily have been cured” by an amended indictment with proper tolling language. Other than offering these broad strokes, the State has not meaningfully engaged with Jessie’s argument that the original indictment did not provide adequate notice of the engaging offense alleged in the superseding indictment because the superseding indictment expanded the manner and means of committing the offense. See West, 632 S.W.3d at 911; see also *Watkins v. State*, No. 10-23-00040-CR, 2023 WL 8271793, at *4 (Tex. App.—Waco Nov. 30, 2023, no pet.) (mem. op., not designated for publication) (finding under West that a prior indictment tolled limitations because the superseding indictment “did not allege a separate and discrete offense from the original indictment or alternative manner and means for the commission of the charged offense” (emphasis added)). It is undisputed that the superseding indictment was presented outside the limitations period. Therefore, to determine whether the original indictment tolled limitations, we consider whether it “provided the type of clear notice necessary to identify and preserve the facts and witnesses essential to defend against the subsequent indictment.” West, 632 S.W.3d at 914. We conclude that it did not. 24 While it is true, as the State suggests, that both indictments were based on the same predicate offense, “the gravamen of the offense of engaging in organized criminal activity is the circumstance surrounding the conduct,” O’Brien, 544 S.W.3d at 391, and there are two ways the State can prove “the creation of crime rings that result from the pursuit of a collective and continuous course of criminal behavior.” Id. at 388. That is, the defendant acted either as a member of a combination or a criminal street gang. See TEX. PENAL CODE § 71.02(a)(1). While the original indictment alleged that Jessie acted as a member of a combination, the superseding indictment alleged in the disjunctive that Jessie acted “[a]s [a] member[] of a criminal street gang, or a criminal combination.” These are distinct manners and means that require different proof by the State, and by extension, naturally give rise to different defensive strategies. See *Curiel v. State*, 243 S.W.3d 10, 15 (Tex. App.—Houston [1st Dist.] 2007, pet. ref’d) (“The State’s proof, therefore, must show that appellant had the intent to establish, maintain or participate as a member of a criminal street gang, but need not further show that appellant had the intent to act in a combination, or in the profits of a combination, because those are alternative ways of proving an offense of engaging in organized criminal activity.” (citation modified)); West, 632 S.W.3d at 915 (explaining that the tolling inquiry turns “on whether the defensive strategy to the prior indictment’s allegations would have necessarily translated into defenses to the subsequent indictment’s allegations”). To establish that a defendant committed a predicate offense “as a member of a criminal street gang,” the State

must prove “that the defendant was acting in the role, capacity, or function of a gang member at the time of the offense.” Zuniga, 551 S.W.3d at 736 (citation modified). In 25 comparison, to establish participation in a combination, the State must prove “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.” Nguyen, 1 S.W.3d at 697 (citation modified). Indeed, as the prosecutor said during closing arguments, the State added the gang allegation in the superseding indictment “to cast as wide a net as possible because everybody might see it a little bit different.” Moreover, in the original indictment, the State alleged that only Jessie, Nelsin, and Powell formed a combination by conspiring to commit the underlying theft. Contrary to the State’s assertion, the superseding indictment did not merely allege the “same listed co- conspirators” contained in the original indictment. Rather, the superseding indictment named six additional members of the combination “and other persons unknown to the grand jurors.” The original indictment did not provide Jessie “clear notice” in 2020 that one of the State’s primary theories at trial in 2024 would be that Jessie committed the predicate offense as part of a much larger criminal enterprise that allegedly committed vehicle thefts and burglaries across seven counties in 2016, two years prior to the predicate offense in this case. See West, 632 S.W.3d at 914. The value the State placed on this evidence is reflected in the time it spent presenting it to the jury. Of the four police officers the State called as witnesses, three of them testified about the 2016 incidents, and two of them testified exclusively about their investigations into the 2016 incidents. Even though Nelsin and Jessie were separately indicted on another count of engaging in organized criminal activity for their alleged involvement in the 2016 “crime ring” that “[i]nvolved a large group of suspects,” the State insisted through its questions and 26 argument that “members of the combination can change over time,” and therefore, the jury should infer that the predicate offense in this case was committed with the intent to maintain the much larger combination alleged in the superseding indictment. See TEX. PENAL CODE § 71.02(a)(1). Nothing in the original indictment suggested that Jessie needed to “identify and preserve the facts and witnesses essential to defend against” those expansive allegations. West, 632 S.W.3d at 914. For these reasons, we conclude that the original indictment did not toll limitations as to Count I of the superseding indictment. See *id.*; see also Watkins, 2023 WL 8271793, at *4. Consequently, Jessie has demonstrated that a motion to dismiss Count I of the superseding indictment would have ultimately been successful and that the trial court abused its discretion by denying his motion for new trial by misapplying the law to the established facts. See Jackson, 973 S.W.2d at 957; Guzman, 955 S.W.2d at 89; Ex parte L.M.W., 578 S.W.3d at 194. Counsel therefore provided ineffective assistance by forfeiting Jessie’s meritorious limitations defense. See Compton, 202 S.W.3d at 421; Lopez, 343 S.W.3d at 143. Finally, since a properly raised limitations defense is an absolute bar to prosecution, we find that counsel’s omission was clearly prejudicial to Jessie, who was convicted of the more serious, time-barred offense and sentenced to forty-five years’ confinement. See Strickland, 466 U.S. at 694. Accordingly, we reverse Jessie’s conviction for

engaging in organized criminal activity and remand to the trial court for a new trial. 5 5 Based on our disposition of this issue, we do not reach Jessie's other issues. See TEX. R. APP. P. 47.1. 27

IV. CONCLUSION

We reverse Jessie's conviction and remand to the trial court for further proceedings consistent with this memorandum opinion.

JENNY CRON

Justice Do not publish. TEX. R. APP. P. 47.2(b). Delivered and filed on the 14th day of May, 2026. 28