

No. 2—09—0400
Order filed January 3, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 06—CF—2568
)	
LOUIS R. PETRICK,)	Honorable
)	James K. Booras,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

Held: The trial court did not err in its evidentiary rulings, and the evidence was sufficient to sustain defendant's conviction of first-degree murder.

Following a jury trial, defendant, Louis R. Petrick, was convicted of first-degree murder (720 ILCS 5/9—1(a)(2) (West 2006)) based on a theory of accountability (720 ILCS 5/5—2(c) (West 2006)) for a drive-by shooting. The trial court sentenced defendant to 36 years' imprisonment. On appeal, defendant argues that the trial court erred in: (1) admitting hearsay statements against him; (2)

admitting gang-related evidence; (3) denying his motion to substitute judges; and (4) failing to grant his motion for a bill of particulars. Defendant also argues that (5) the evidence was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

I. BACKGROUND

According to evidence presented by the State, defendant and three of his friends were driving around Waukegan in a truck in the early morning hours of June 22, 2006. Bicente Lash was driving; defendant sat in the front passenger seat; and Juan Serrano and Pablo Aguilar sat in the back seat. When Aguilar first got in the truck, he had a .38-caliber revolver with him. Lash did not want the gun in the passenger compartment, so defendant put the gun underneath the truck's hood. The group drove by a street corner where they saw two African American men and one Hispanic man. Some of the truck's occupants yelled "Gangsta Killa" or "Gangsta Killer" and made Latin King gang signs. Serrano testified that defendant and Aguilar were the ones who made gang signs. The men on the street either did not respond or raised their hands with their palms up, indicating, "what's up[?]"

Lash continued driving. Aguilar commented that he knew the men and thought they were "Renegades." Some minutes later, Aguilar suggested that they go back. He asked for a "strap," referring to a gun. He said that they "should go back and check these niggas," meaning that they should "see who these guys" were. There was never any explicit discussion about shooting anybody. Lash kept driving at first but then pulled over to the side of the road and unlatched the truck's hood. Defendant got out of the truck, opened the hood, and returned with the gun, which was wrapped in a rag. He gave the gun to Aguilar, and they started driving back to the corner where they saw the men. About one minute before they got there, Aguilar went to the back of the truck through the rear window and stayed down low. He unwrapped the gun and wrapped the rag over his face. When they

got to the corner, at about 1:30 a.m., Lash slowed the truck down. Aguilar sat up and aimed the gun at a group of about five people, four of whom were not present at the corner earlier. Aguilar fired three or four shots. Lash then sped the truck away. One of the shots hit and killed William Guzman, who had been walking to a nearby gas station with family members to buy cigarettes.

According to a videotaped statement by defendant and testimony from a police officer, defendant said that he was not in a gang but hung around with Latin Kings. He admitted putting Aguilar's gun under the hood. He said that he did not make any gang signs or see anyone else in the truck doing so. After seeing the men on the corner, Aguilar told him to get the strap. Defendant said that they should just fight the men because they outnumbered them. Aguilar still said to get the strap, and defendant did so after Lash pulled the car over. Defendant gave Aguilar the gun but told him not to shoot the men.

Officer Mike Heidler was accepted by the trial court as an expert in gangs. He testified regarding how one becomes initiated into a gang; the hierarchy of individuals in a gang; gang rivalries; and gang identifiers, such as gang colors and gang signs. Heidler testified that in the Midwest, the gangs fell into two "nations," the Folk Nation and the People Nation. Gangs within the same nation were allies and rivals of gangs in the other nation. The Latin Kings were in the People Nation while the Renegade Gangster Disciples were in the Folk Nation, meaning that they were rivals. The phrase "Gangsta Killa" was a way for a People Nation gang member to show disrespect to a Folk Nation gang member.

Heidler further testified that he was a school resource officer from 1999 to 2004 at the same middle school that defendant attended. At that time, defendant wore Latin King colors, which were gold and black. He also associated with other students wearing those colors. Heidler had counseled

defendant about his gang affiliations, and defendant said that he was “a wanna be Latin King.” That term was used to describe children between the ages of 11 and 14 who were not necessarily hard core gang members but affiliated with gang members. Subsequent to defendant leaving middle school, Heilder saw him about six to eight times in the Latin King neighborhood, and he was associating with known Latin King gang members. Heidler also knew Aguilar and believed him to be a Latin King member based on his clothing, associations with other Latin Kings, and the neighborhood in which he hung out.

The jury found defendant guilty of first-degree murder. Defendant filed a motion for a new trial on April 14, 2008. The trial court denied the motion on February 11, 2009, and sentenced him to 36 years’ imprisonment. On March 11, 2009, defendant filed a motion to reconsider his sentence and the rulings on his posttrial motions. The trial court denied the motion on April 7, 2009, and defendant filed his notice of appeal the same day.

II. ANALYSIS

A. Hearsay

Defendant first argues that the trial court erred in overruling his hearsay objection to Serrano’s testimony about Aguilar’s statements preceding the shooting. Specifically, Serrano testified that Aguilar: said that he (Aguilar) knew the men standing at the corner and believed them to be “Renegades”; asked for a “strap”; and said that they “should go back and check these niggas.” Defendant argues that the out-of-court statements imputed a motive and/or intent on his part to participate in the shooting without subjecting the declarant to cross-examination. The trial court overruled defendant’s hearsay objection on the basis that the statements were part of the *res gestae*, part of a course of conduct, and were made in furtherance of a conspiracy. In commenting on the

hearsay objections when ruling on defendant's motion for a new trial, the trial court also stated that even if the statements were hearsay, they were admissible because they were part of a conspiracy and could constitute: notice as to what subsequent conduct would follow; present "tense" [sic] impression, and statements of intent.

Evidentiary rulings are within the trial court's discretion and will not be reversed absent a clear abuse of discretion. *People v. Wheeler*, 226 Ill. 2d 92, 132 (2007). Hearsay is an out-of-court statement offered to establish the truth of the matter asserted. *People v. Banks*, 237 Ill. 2d 154, 180 (2010). Thus, an out-of-court statement offered for a purpose other than to establish the truth of the matter asserted is not hearsay. *Id.* at 180. Here, the statements that Aguilar knew the men on the corner and thought they were "Renegades" were not hearsay because they were not offered to prove the truth of the matter asserted, *i.e.* that Aguilar really knew the men and that they were Renegades, but rather to prove defendant's motive in later handing Aguilar the gun. See *People v. Moss*, 205 Ill. 2d 139, 160 (2001) (out-of-court statements regarding alleged sexual assault were not offered to show that assault actually occurred, but instead to show the defendant's motive to murder the victims to prevent them from testifying at his upcoming trial). Also, any erroneous admission of Serrano's testimony that Aguilar asked for a "strap" could only be harmless error, as a police officer testified that defendant told him that Aguilar asked defendant to get the "strap."

Moreover, we agree with the trial court that all of the statements were admissible under the coconspirator's exception to the hearsay rule. Under this exception, a declaration by one coconspirator is admissible against all coconspirators where the statement was made during the course of and in furtherance of the conspiracy. *People v. Leak*, 398 Ill. App. 3d 798, 824-25 (2010). Statements in furtherance of the conspiracy include those that advise, encourage, aid, or abet its

perpetration. *Id.* at 825. Such statements are admissible if the State makes a *prima facie* showing of a conspiracy between the declarant and the defendant, independent of the hearsay statements. *People v. Batrez*, 334 Ill. App. 3d 772, 783 (2002). To make a *prima facie* showing of a conspiracy, the State must show by a preponderance of the evidence that: (1) two or more persons intended to commit a crime; (2) they engaged in a common plan to accomplish the criminal goal; and (3) one or more of the coconspirators did an act or acts in furtherance of the conspiracy. *Leak*, 398 Ill. App. 3d at 825. "The existence of a conspiratorial agreement need not be proven by direct evidence but, rather, may be inferred from all surrounding facts and circumstances, including the acts and declarations of the accused." *Batrez*, 334 Ill. App. 3d at 783. The evidence must be sufficient, substantial, and independent of the coconspirator's declarations (*People v. Coleman*, 399 Ill. App. 3d 1198, 1203 (2010)), but because conspiracies have a clandestine nature, Illinois courts allow broad inferences to be drawn from circumstances and the parties' acts and conduct (*Leak*, 398 Ill. App. 3d at 826). The evidence relied on by the State may relate to acts or declarations that took place either before or after the hearsay testimony. *People v. Pintos*, 172 Ill. App. 3d 1096, 1105 (1988). It is not necessary for the State to have charged a conspiracy in order for the coconspirator exception to apply. *Coleman*, 399 Ill. App. 3d at 1203.

We conclude that the State made a *prima facie* showing of a conspiracy among defendant, Aguilar, and Lash. Independent of the alleged hearsay statements, the State's evidence showed that defendant put Aguilar's gun under the hood of the truck; occupants in the truck made Latin King gang signs and yelled "Gangster Killer" at three people near a street corner; Lash soon after pulled over to the side of the road; defendant retrieved the gun and gave it to Aguilar; they began driving back to where they had seen the men; Aguilar crawled into the back of the truck through the back

window; Aguilar removed a rag from the gun and wrapped it around his face; Lash slowed the truck down when they approached the corner; Aguilar sat up and fired the gun four times at a group of people near where the three men had been; and Lash then sped away. Further, there was evidence that Aguilar was a Latin King gang member; defendant was a Latin King member or associated with that gang; the Latin Kings were part of the “People Nation” of gangs; and the phrase “Gangster Killer” was a phrase People Nation gang members would use to show disrespect to rival Folk Nation gang members. Thus, the State made a *prima facie* showing of a conspiracy among at least defendant, Aguilar, and Lash, to return to the area where they had made gang-related remarks and signs to people on the street and shoot at them.

Defendant argues that the State wholly failed to establish the existence of a conspiracy, because there was no evidence that he intended for Aguilar to shoot at the victim. Defendant points to the officer’s testimony that defendant said that he told Aguilar not to pull the weapon out or shoot at anyone. However, the officer also testified that defendant told him that Aguilar persisted in asking for the gun and defendant got it for him, which is evidence that defendant decided to go along with the plan to shoot at the men. Defendant also notes that Serrano testified that the group did not talk about shooting at the men, and Serrano did not know for sure if defendant knew that Aguilar exited the vehicle through the truck’s back window to get into the truck’s bed. This argument is without merit. It was not necessary for defendant to have known that Aguilar was crawling through the back truck window, as Aguilar could have also remained seated and fired shots through that window. Further, although Serrano testified there was no explicit conversation about shooting anyone, the parties’ actions were sufficient to constitute a *prima facie* showing of a conspiracy to shoot at the men they had seen, which ultimately resulted in Guzman’s death. Accordingly, the trial court acted

within its discretion by allowing Serrano's testimony about Aguilar's statements into evidence.

B. Gang Evidence

Next, defendant argues that the trial court erroneously admitted highly prejudicial gang evidence that was not relevant to his guilt or innocence. Prior to trial, the State filed a motion *in limine* to admit gang evidence on the basis that it was relevant to defendant's motive to aid and abet in the shooting. The trial court granted the motion over defendant's objection. Defendant reiterated his objection to gang evidence at the start of Heidler's testimony and raised the issue in his posttrial motion, thereby preserving his argument for review. See *People v. Maldonado*, 398 Ill. App. 3d 401, 414-15 (2010).

Evidence that a defendant was a gang member or participated in gang activities is admissible at trial to establish a common purpose or design or to provide a motive for an otherwise inexplicable act. *People v. Suastegui*, 374 Ill. App. 3d 635, 645 (2007). Still, such evidence will be admitted only where there is sufficient proof that gang activity is related to the crime charged. *Maldonado*, 398 Ill. App. 3d at 420. Further, gang evidence will be excluded if its probative value is substantially outweighed by its prejudicial effect. *Suastegui*, 374 Ill. App. 3d at 645. A trial court's decision to allow gang evidence will not be reversed absent an abuse of discretion. *People v. Johnson*, 208 Ill. 2d 53, 102 (2003).

Defendant argues that even if any rivalry between the Latin Kings and Renegades had relevance to establish motive, the bulk of Heidler's testimony far exceeded the scope for which such evidence was deemed admissible. Defendant points to Heidler's testimony that gangs are an organized group of individuals who engage in a pattern of criminal activity; initiation can be anywhere

from a beating to robbing or shooting a rival gang member; and new members called “shorties” or “soldiers” are the members typically out committing drive-by shootings or vandalizing property.

We conclude that the trial court did not abuse its discretion in allowing Heidler’s testimony. The gang evidence in general provided a motive for a shooting that resulted in the death of a person who was simply walking down the street, and whom Aguilar may not even have known, which would explain an otherwise inexplicable act. This case is distinguishable from *People v. Iniguez*, 361 Ill. App. 3d 807 (2005), which defendant cites, because in that case there was no evidence that the defendant was aware of a gang fight six months before the killing, which was allegedly the motive for his crime. *Iniguez*, 361 Ill. App. 3d at 817. Here, in contrast, defendant was present during and may have participated in the gang signs and remarks that, under the State’s theory, showed a motive for the subsequent shooting. For Heidler to offer testimony about gang rivalries, which the State offered to explain the motive, it was relevant to first explain the basic structure and activities of gangs. Furthermore, Heidler’s testimony about how one can join a gang was relevant in aiding the jury in assessing whether any of the truck’s occupants could have been gang members, and his testimony that gang members sometimes commit drive-by shootings was directly tied to this case, which involved a drive-by shooting. While some of the details Heidler provided could have been left out, the bulk of his testimony was relevant to the case and the probative value of the gang testimony outweighed its prejudicial effect. As such, the trial court acted within its discretion in allowing his testimony into evidence. See *People v. Hamilton*, 328 Ill. App. 3d 195, 202 (2002) (there was no reversible error in allowing gang evidence even though there was a “torrent of detail concerning gang life” and the “trial court should have done some editing”).

Defendant also argues that the trial court erred by allowing Heidler's testimony that years before, when defendant was in middle school, Heidler counseled him about the consequences of joining or affiliating with a gang. Heidler testified that "wanna be" gang members either become gang members "or they choose the right path and they don't become one." Defendant argues that this testimony sent a clear signal to the jury that defendant had chosen the "wrong path," and it was completely irrelevant to any arguable motive to commit the shooting. However, the fact that Heidler counseled defendant about gangs is relevant to explain the manner in which he had interacted with defendant and why defendant would have told him that he was a "wanna be" gang member, which in turn was relevant to show motive. Further, we agree with the State that any error in allowing testimony that defendant had chosen the "wrong path" was harmless. See *In re E.H.*, 224 Ill. 2d 172, 180 (2006) (an evidentiary issue is harmless if there is no reasonable probability that the jury would have acquitted the defendant absent the error). The remark was an isolated statement and Heidler's expert testimony about the nature of gangs more powerfully indicated that joining a gang was not the right choice, meaning that there is no reasonable probability that defendant would have been found not guilty if the statement was excluded.

C. Substitution of Judges

Defendant also argues that the trial court erred in denying his motion to substitute the trial judge for cause. Before the trial in the instant case, the same trial judge, Judge Booras, presided over an unrelated case against defendant. There, defendant was convicted of attempted murder, aggravated discharge of a firearm, and aggravated battery for firing shots at a group of people outside a shopping mall, resulting in one man being shot in the ankle. There was some evidence that the shooting was gang-related. Defendant was out on bond for that offense when the shooting in this

case occurred. Defendant argued in his motion to substitute that Judge Booras's comments during the sentencing hearing in the prior case demonstrated that he was prejudiced against defendant. Another trial judge hearing defendant's motion to substitute denied the motion, finding that Judge Booras's comments did not indicate "the type of animosity, hostility, ill will or distrust that would be required by statute."

At the sentencing hearing in defendant's prior case, Heidler provided testimony for the State about gangs and opined that defendant was a Latin King gang member. The State also presented testimony relating to defendant's participation in the instant case. In commenting on the evidence presented at the hearing, Judge Booras stated that he did not find any mitigating factors. He stated:

"it's a menace to society to have these gangs, and those that are immediate and close to those people that belong to gangs not to do anything about it.

These good people that came and testified here today, I don't know what if any are doing [sic] to see that this so-called kids [sic], they're killer kids, not be members of gang, gangs of people and gangs in terrorism."

Judge Booras also stated that defendant's conduct was not induced or facilitated by anyone else. Judge Booras stated that defendant "armed himself to show that he's a big man. *He's a big man inside, not in brain.* *** His exercising of his judgment is minuscule." (Emphasis added.) Judge Booras stated that he understood youthful indiscretions, but defendant had been shown the right way by "so many good people and never listened." Judge Booras questioned what society should do with someone like that, and "What do we do with an animal that has gone unbridled?"

The trial court further stated: "In his short 16 years of life, in the last couple years being behind bars unable to commit crimes he has committed so many crimes including this one and as

evidence was introduced he has aided and abetted in the commission of a murder.” The trial court stated that the public had done so much to put defendant on the path to good citizenship but:

“the only God that he believes in is the gang, and as the grand factor in aggravation I must find this offense was related to the activities of an organized gang.”

*** Society must defend itself against antisocial behavior of this sort even though it comes from someone that’s young and frankly the gang members are getting younger and younger. I don’t know who’s behind that. I don’t know who’s arming our children to kill each other. I don’t know who is arming our children to become killers.”

The trial court stated that it would be justifiable to sentence defendant to the 28 years recommended by the State. However, considering defendant’s remorse and the testimony from two witnesses in mitigation, there was some hope that defendant could turn his life around and become a law-abiding member of society. The trial court stated that it still had to sentence defendant to many years to achieve that goal, protect society, and deter others, so it imposed a sentence of 18 years’ imprisonment.

In sentencing defendant in the instant case, Judge Booras similarly commented that although defendant was provided with many such programs as a juvenile, it did not work because he “believes in one thing, violence and the gang. That’s his religion.” Judge Booras also said that the public needed to be protected from “this type of urban terrorism.” He additionally stated:

“And I’m not saying that your client was not used in this situation, Mr. Zeit. I have to agree with you that he was inducted or picked on and gotten into the gang. They got him. They got him when he was young. But when he was older, he knew. *You know, his size*

alone wasn't sufficient, I take it, to make him feel like a big man. He had to have that gun[,] to have that crutch[,] and go out and shoot people.” (Emphasis added.)

To prevail on a motion to substitute judges for cause, a defendant must show actual prejudice, and not just the possibility of prejudice. *People v. Jones*, 219 Ill. 2d 1, 18 (2006). Prejudice refers to a state of mind that creates a fixed anticipatory judgment, rather than opinions which yield to the evidence. *People v. Wright*, 234 Ill. App. 3d 880, 898 (1992). The prejudice must come from an extrajudicial source and result in an opinion on the merits based on something other than what the judge learned from participating in the case. *Id.* at 898. Prejudice is demonstrated by showing animosity, hostility, ill will, or distrust towards the defendant. *Jones*, 219 Ill. 2d at 18. A trial judge is presumed to be impartial, and the party alleging prejudice has the burden of overcoming that presumption. *People v. Faria*, 402 Ill. App. 3d 475, 482 (2010). “Allegations of judicial bias or prejudice must be viewed in context and should be evaluated in terms of the trial judge’s specific reaction to the events taking place.” *Id.* at 482. We will not disturb a trial court’s ruling on a motion to substitute a judge for cause unless the ruling is against the manifest weight of the evidence. *Jones*, 219 Ill. 2d at 18.

Defendant argues that Judge Booras’s prejudice was demonstrated by the sentencing hearing in the prior case, specifically the comments quoted above. Defendant argues that the judge evinced disdain for him as a “killer kid” and a gang member partaking in “terrorism”; called him an “animal” who had become “unbridled”; said that his god was the gang; and called his family members a “menace” for failing to prevent defendant’s alleged gang activities. Defendant argues that Judge Booras also expressed a predisposition towards believing that he was guilty of murder before the trial for this case even took place. Defendant contends that Judge Booras’s “arbitrary” rulings allowing

for the admission of hearsay statements and extensive, irrelevant gang evidence further demonstrates his prejudice.

Defendant's argument is without merit. We have already determined that the trial court did not err in allowing the alleged hearsay testimony or the gang evidence. As for Judge Booras's alleged predisposition towards believing defendant was guilty of murder, at sentencing a trial court may consider evidence of other crimes as long as the evidence is relevant and reliable. *People v. Harris*, 359 Ill. App. 3d 931, 936 (2005). Therefore, Judge Booras did not err in considering and briefly commenting that there was evidence that defendant aided and abetted in Guzman's murder. At sentencing a trial court may also consider a defendant's age, moral character, habits, social environment, abnormal tendencies, natural inclination or aversion to commit crime, motivations for conduct, family life, and occupation. *People v. Reed*, 376 Ill. App. 3d 121, 128 (2007). Accordingly, Judge Booras could consider and comment upon gang evidence.

Although defendant takes issue with particular comments made by Judge Booras, we emphasize that this was not closing argument where we are determining whether a prosecutor's comments may have inflamed a jury. Moreover, Judge Booras did not directly refer to defendant as a "killer kid," and even if he had, the comment was supported by evidence that defendant had shot a gun at people outside a mall and had aided in Guzman's murder, which are also the types of acts which terrorize a society. Judge Booras referred to the gang as defendant's god as an analogy to defendant's motivation to act, which was supported by evidence. Judge Booras did not directly call defendant an unbridled animal but instead used the reference to question what to do with someone who was out of control, as evidenced by defendant's inability to refrain from criminal activity. Judge Booras further did not call defendant's relatives menaces but rather said that it was a menace to

society that family members do nothing about gang participation; in fact, Judge Booras referred to defendant's relatives more than once as "good people." Judge Booras's statement that defendant was not a "big man" in brain was tied to defendant not exercising his judgment, which was also supported by the evidence. Significantly, all of Judge Booras's comments were related to evidence introduced in the case rather than an extrajudicial source, as required to show prejudice. Further, viewed as a whole, Judge Booras's comments and actions clearly did not show animosity, hostility, ill will, or distrust towards defendant. Judge Booras stated that he would be justified in sentencing defendant to the 28 years recommended by the State, but he instead sentenced defendant to 18 years because of defendant's remorse and because relatives' testimony showed that there was hope that defendant could turn his life around. Accordingly, the trial court's ruling denying defendant's motion to substitute Judge Booras for cause was not against the manifest weight of the evidence. *Cf. People v. Borash*, 354 Ill. App. 3d 70, 80-82 (2004) (record as a whole did not indicate that trial court considered improper factors in sentencing defendant, even though trial court commented on the defendant's lack of an apology, stated that he had a horrendous attitude in painting himself as a victim, and stated that he " 'should be taken out and beaten' "); *People v. Blanck*, 263 Ill. App. 3d 224, 232-33 (1994) (trial court's comments that the defendant was " 'very devious' " and " 'very clever' " did not entitle the defendant to a substitution for cause; the remarks were isolated and did not show a pervasive attitude of animosity, hostility, ill will, or distrust).

D. Bill of Particulars

Defendant next argues that the trial court erred in denying his motion for a bill of particulars. We briefly provide some background on this issue. Defendant was first charged with first-degree murder by complaint on June 22, 2006. The complaint alleged he "without lawful justification,

handed Pablo Aguilar a firearm, at which time Pablo Aguilar shot the firearm into a crowd of people knowing such act created a strong probability of death or great bodily harm to another, thereby causing the death of William Guzman.” Defendant was later charged by indictment on July 19, 2006, with multiple counts of murder for “[shooting] a firearm at William Guzman” with the intent to kill or cause great bodily harm to him or another person, or knowing that the act created a strong probability of such outcomes, and causing Guzman’s death.

On March 12, 2007, defendant filed a motion for a bill of particulars arguing that the indictment failed to specify the theory under which he was being charged, and that such information was necessary for him to prepare his defense. At a hearing in October 2007, the defense argued that if defendant was charged by accountability, the defense needed to know what he did to aid or abet anyone. The State argued that defendant’s participation was revealed in discovery, but the trial court initially granted the motion, saying that the State would have to specify what part of police reports or the videotaped statements contained the answers. The trial court stated that it might change its mind if the State demonstrated that the evidence defendant needed to prepare a defense was obvious in the police reports and videotapes.

The trial court reconsidered its ruling right before the trial in March 2008 and denied defendant’s motion for a bill of particulars. It stated that the defense had observed the co-defendants’ trial and the answers were clear in the testimony. The trial court further stated that when it initially ruled on the bill of particulars, it was not sure that the information defendant demanded was in the police reports, but the information was provided in Serrano’s written and videotaped statements.

The trial court may require the State to provide a defendant with a bill of particulars if the indictment fails to specify the particulars of a charged offense sufficiently to allow the defendant to

prepare a defense. *People v. Woodrum*, 223 Ill. 2d 286, 301 (2006). The bill of particulars serves to give the defendant notice of the charge and inform him of the particular transactions at issue, thereby enabling the defendant to prepare a defense. *Id.* at 301-02. The court may consider any discovery provided by the State when assessing the need for a bill of particulars. *People v. Lindmark*, 381 Ill. App. 3d 638, 663 (2008). A defendant may not use a bill of particulars as a means to obtain a general disclosure of evidence. *People v. Ward*, 302 Ill. App. 3d 550, 559 (1998). We review a trial court's ruling on a motion for a bill of particulars under an abuse of discretion standard. *Woodrum*, 223 Ill. 2d at 302. An abuse of discretion occurs only where the trial court's decision is arbitrary, and no reasonable person would adopt that view. *Id.* at 302.

Defendant argues that while the indictment was legally sufficient, it did not adequately apprise him of the nature of the charges so as to enable him to prepare a defense. Defendant argues that prior to trial it was clear that he was being prosecuted based on a theory of accountability, but because the indictment did not allege any acts that would render him legally accountable, he was left to guess as to what acts allegedly made him guilty of murder. Defendant argues that as a result of the denial of his motion for a bill of particulars, he was completely surprised when the State introduced evidence that he directed Aguilar to shoot at the victim. Defendant cites Heidler's testimony that new gang members are often the ones who commit drive-by shootings, and defendant argues that the State also elicited testimony from the police officer that he asked defendant if he was simply pointing the finger at Aguilar because a juvenile may receive a lesser sentence for a shooting. Defendant argues that he did not receive any discovery about the State's theory that he had given the gun to Aguilar because the punishment would not be as severe.

Defendant's argument is not persuasive. The initial complaint charged defendant with murder for handing the gun to Aguilar, and the police reports, codefendants' statements, and videotaped interviews also included the information that defendant removed the gun from under the truck's hood and gave it to Aguilar. Thus, defendant was sufficiently apprised of the main act which, under the State's theory, made him accountable for Guzman's murder. Contrary to defendant's argument, no evidence was admitted that defendant had given the gun to Aguilar because punishment is less severe for juveniles or that defendant had told Aguilar to shoot the victim. Although Heidler testified that new gang members often commit drive-by shootings, there was no evidence that Aguilar was a new gang member. Further, while a police officer testified that he asked defendant if he was "simply pointing out the juvenile [Aguilar]" because the punishment would be less severe for Aguilar, the trial court sustained defendant's objection to this testimony and later instructed the jury to disregard any evidence to which an objection had been sustained, thereby avoiding error. See *People v. Jackson*, 391 Ill. App. 3d 11, 33 (2009) (the trial court's sustaining of an objection and later instruction to jury to disregard questions to which objections were sustained obviated any error). Even otherwise, this questioning was also revealed in discovery, so it would not serve as the basis for a bill of particulars. Moreover, the question appears to ask whether defendant was blaming Aguilar for a shooting that defendant directly committed, but it was clear that the State's theory was that defendant was liable through accountability rather than because he was the actual shooter. Serrano testified that Aguilar asked for the gun, and the officer also testified that defendant told him that Aguilar repeatedly asked for the gun. In sum, based on the discovery provided to defendant, the trial court acted within its discretion in ruling that he was not entitled to a bill of particulars.

E. Sufficiency of the Evidence

Defendant next argues that he was not proven guilty beyond a reasonable doubt. The standard of review for a claim of insufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, 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, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier of fact has the responsibility to assess witnesses' credibility, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

Generally, in order to be found guilty of murder according to the statute under which defendant's conviction was entered, the State would be required to prove that a person killed an individual without lawful justification, and in performing the acts which caused the death, he knew that the acts created a strong probability of death or great bodily harm to that individual or another. 720 ILCS 5/9-1(a)(2) (West 2006). Here, however, defendant was found guilty under a theory of accountability. A person is legally accountable for the conduct of another when "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2008). To establish the necessary intent, the State is required to prove beyond a reasonable doubt that the defendants shared the principal's intent, or there was a common criminal design. *People v. Graham*, 392 Ill. App. 3d 1001, 1009 (2009). Intent may be inferred from the defendant's acts and the circumstances surrounding the offense's commission. *Id.*

at 1009. A person's mere presence at the crime scene with knowledge of its commission does not establish accountability, but a defendant may still be accountable without active participation if there is a common criminal plan or purpose, which can also be inferred from the circumstances. *People v. Gabriel*, 398 Ill. App. 3d 332, 345 (2010). Circumstances that the trier of fact may consider in determining a defendant's legal accountability include: (1) his presence at the scene without disapproval; (2) flight from the scene; (3) failure to report the crime; (4) close affiliation with the codefendant after the crime; (5) sharing the proceeds of the criminal act; and (6) destroying or disposing of evidence. *Id.* at 345.

We conclude that there was sufficient evidence for a rational trier of fact to have found defendant legally accountable for Guzman's murder beyond a reasonable doubt. Viewing the evidence in the light most favorable to the State, the evidence showed that defendant was riding in a truck with Lash, Serrano, and Aguilar. According to Heidler, Aguilar was a Latin King gang member while defendant and Lash were affiliated or associated with that gang. When Aguilar entered the truck, defendant put Aguilar's gun under the truck's hood because Lash did not want it in the passenger compartment. The truck passed some men near a street corner, and defendant and Aguilar made Latin King gang signs at them. Some people in the truck also yelled "Gangster Killer," a phrase which indicated disrespect to rival Folk Nation gang members. Aguilar then said that he knew the men at the corner and thought that they were "Renegades"; the Renegades were a rival gang. Aguilar said that they should go back, and he asked for a "strap," meaning the gun. He said that they "should go back and check these niggas," meaning that they should "see who these guys" were. Lash pulled over and defendant retrieved the gun and gave it to Aguilar, and the group started driving back to the corner where they saw the men.

Defendant's act of handing Aguilar the gun after they had made gang-related signs and remarks at alleged rival gang members and planned to return to "check" them out indicated that he shared Aguilar's intent to shoot at the men, or that there was a common criminal plan to shoot at the men. That is, defendant made the gun directly accessible to Aguilar with knowledge that they were going to return to the corner where they saw the alleged rival gang members, indicating that he shared the intent or was part of a criminal plan for the gun to be used. Defendant does not dispute that shooting at the men created a strong probability of death or great bodily harm to those individuals, as required for first-degree murder. About one minute before they got to the corner, Aguilar went into the back of the truck through the rear window and wrapped a rag over his face. Consistent with a common criminal plan, Lash slowed the truck down when they got to the corner, at which point Aguilar sat up and fired shots at a group of people, and Lash then sped away. Defendant's presence at the time of the shooting, flight from the crime scene, and failure to report the crime strengthened the evidence of accountability.

Defendant argues there was no preconceived plan for a shooting, again pointing to Serrano's testimony that there was no discussion about shooting anyone. However, a "common criminal plan or design can be inferred from the circumstances, and a defendant need not express '[w]ords of agreement' to be held accountable for a codefendant's criminal acts." *Gabriel*, 398 Ill. App. 3d at 345, quoting *People v. Taylor*, 164 Ill. 2d 131, 141 (1995). Here, the circumstances could reasonably indicate a common plan to shoot at the men. Defendant also reiterates his argument that he told Aguilar not to get the gun and not to shoot at the men, and that Serrano did not know if defendant saw Aguilar crawl into the back of the truck. Again, whether defendant knew that Aguilar crawled into the back of the truck is not pivotal, as Aguilar could have shot his gun through the back window.

Also, the fact that defendant retrieved the gun and gave it to Aguilar in spite of circumstances indicating that Aguilar wanted to shoot is evidence that defendant decided to go along with the plan. Accordingly, there was sufficient evidence for defendant to be found guilty of first-degree murder based on accountability beyond a reasonable doubt.

III. CONCLUSION

For the foregoing reasons, we affirm the judgment of the Lake County circuit court.

Affirmed.