

No. 1-10-1548

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 02 CR 18209
)	
DONALD SHAW,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in admitting gang evidence when that evidence explained the otherwise inexplicable sequence of events culminating in the victim's death.
- ¶ 2 After a jury trial, defendant Donald Shaw was convicted of felony murder and sentenced to 22 years in prison. On appeal, defendant contends that he was denied a fair trial by the admission of gang evidence at trial. We affirm.
- ¶ 3 Defendant and codefendant Lance Edwards were charged with felony murder predicated on armed robbery and aggravated battery with a firearm after the victim Shakir Beckley was shot

and killed. The matter proceeded to simultaneous trials before separate juries and both men were convicted of felony murder. Defendant was sentenced to 22 years in prison. On appeal, this court vacated defendant's conviction and remanded for a new trial based upon the trial court's refusal to grant a continuance in order to permit the defense to call an eyewitness who would have allegedly corroborated defendant's version of events. See *People v. Shaw*, No. 1-05-3623 (2007) (unpublished order under Supreme Court Rule 23).

¶ 4 Prior to defendant's second trial, the State filed a motion in *limine* to admit certain gang evidence which would explain the motive for the shooting and the deliberate misidentification of the shooter. The State explained that witness Chris Champion was told that the shooter in this case was an Apache Stone which explained why witnesses misidentified Nicholas Mobley as the shooter and then recanted that identification. The trial court granted the motion.

¶ 5 At trial, the State's theory of the case was that although defendant grew up in a neighborhood controlled by the Apache Stones gang¹ he had a friend, Lance Edwards, who was a member of the Vice Lords. Ultimately, defendant's friendship with Edwards led him to place himself between Edwards and Apache Stones Vernard Davis and Mycal Davis when the men attempted to remove Edwards from defendant's car. Defendant and Vernard then engaged in physical altercation the result of which was defendant's beating and his loss of certain possessions. Vernard called defendant several days later to set up a meeting so that defendant could retrieve those possessions. Defendant went to that meeting accompanied by Edwards, Natari Gordon, and Apache Stone Tavares Hunt. Hunt and Gordon were armed, and, ultimately, the victim Shakir Beckley was shot and killed and Vernard was shot. The State supported this

¹ The record indicates this gang is referred to as both the Black Stones and the Apache Stones.

theory with, *inter alia*, the testimony of witnesses Vernard Davis and Terrill Evins and defendant's inculpatory statement.

¶ 6 Vernard Davis testified that although he had grown up with defendant and Edwards in a neighborhood controlled by the Apache Stones, Edwards had moved across a border street and became associated with the Vice Lords. Tavares Hunt was known as "TV" and was an Apache Stone, but Vernard did not believe that defendant was associated with a gang.

¶ 7 On April 10, 2002, Vernard watched as Mycal Davis tried to "aggress" a previous issue with Edwards. When defendant told Mycal to "hold on" as Mycal reached into defendant's car to get Edwards, Vernard stepped in and told defendant that the situation did not have anything to do with him. Vernard and defendant then had "words" and got into a fight. During the fight, defendant's jacket was pulled off. After Vernard won the fight, defendant and Edwards drove away. When Vernard later heard that defendant was looking for him in order to retrieve certain possessions, he contacted defendant, indicated his desire to move on, and made plans to meet defendant. Vernard then accepted the victim's invitation to take a ride.

¶ 8 Several hours later as Vernard walked toward the victim's SUV, he saw defendant drive by. As Vernard approached the back passenger door, defendant, Edwards and a dark-skinned man approached him each in turn. The dark-skinned man opened one of the SUV's doors, took out a pistol, and told everyone to put everything on the front seat. Vernard then looked at defendant, realized he had forgotten about their meeting, and asked if it was "like this." Defendant said he did not know what Vernard was talking about. Vernard also saw a light-skinned man holding a rifle.

¶ 9 At one point, Edwards said that Vernard had been looking for him and punched Vernard in the face. Vernard and Edwards then had a "tussle." During the fight, Vernard was pistol-whipped by the dark-skinned man and kicked by defendant. When he tried to run away, he was

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shot in the stomach. He was also shot in the shoulder. Ultimately, he lay down and played dead. He watched as defendant, Edwards, and the other two men ran to defendant's car and left. Vernard was subsequently taken to the hospital. He later identified defendant and Edwards to the police.

¶ 10 Vernard acknowledged that his neighborhood had been named "Outlaw City" by the Apache Stones. He then identified a photograph of Hunt depicting Hunt's "OLC" tattoo. Vernard recognized this tattoo as gang-related. Below the OLC tattoo was a tattoo of a rifle with a long clip. Another photograph showed Hunt's tattoo of a bloody knife. However, Vernard had never seen Hunt without a shirt and did not know that Hunt had these tattoos. Because of his association with the Apache Stones, Vernard knew that the Apache Stones belonged to the same faction as the Vice Lords. As far as he knew, defendant and the victim did not have "any beefs." Although Mycal and Edwards had "hung out" in the past, for some reason Mycal had a "beef" with Edwards.

¶ 11 The parties stipulated that Vernard had previously testified that defendant arrived after the robbery.

¶ 12 Terrill Evins testified that at the time of the shooting, he was a member of the Black Stones as were Vernard and Mycal. Defendant also belonged to a gang. Evins was with the victim and Vernard when defendant, Edwards and "TV" exited defendant's car. There was also a fourth man with a gun. TV approached Evins, put an assault rifle to his head, and instructed him to walk toward the victim's SUV. Once there, TV told Evins to empty his pockets. At the same time, defendant told TV that Evins was "all right" and "okay," allowing Evins to back up "a little bit." Evins then watched as a fight broke out. At some point, he heard gunshots and saw TV shoot the rifle. Vernard and the victim were both shot. Evins later identified defendant, Edwards, and TV to the police.

¶ 13 During cross-examination, Evins admitted that when he was shown photographs at a police station he identified someone else as TV. However, he explained that the shooting took place in the dark and he was in shock. Evins admitted that the man he identified as the shooter was not from the neighborhood and, unlike TV, did not have a facial tattoo.

¶ 14 Detective John Fassl testified that over the course of several conversations defendant admitted that he was present at the shooting. Defendant indicated that several days before the shooting, he was sitting in his car when "Mike" walked up and, upon seeing Edwards in the back seat, called Vernard over. When Vernard saw Edwards, he demanded that Edwards exit the car. Defendant explained that Vice Lord Edwards and Apache Stone Vernard had a problem. When defendant tried to speak to Vernard, Vernard hit him twice. After Vernard and Mike ran off, defendant noticed that his keys, phone, wallet, and leather jacket were gone.

¶ 15 Several days later defendant received a phone call from Vernard telling him to come and get his property. He went to meet Vernard accompanied by Edwards and Darren Funches.² After parking, defendant walked toward the victim's SUV. As he approached, he saw Hunt and Natari Gordon pointing guns at the victim and Vernard so he turned around. Defendant later told Fassl that he had picked up Hunt and Gordon before going to meet Vernard and, upon locating Vernard, had let Hunt and Gordon out of the car. When he walked back after parking, he saw Gordon and Hunt pointing guns at Evins, Vernard and the victim. As defendant watched, Edwards ran up and hit Vernard. Defendant was then hit by either Evins or Vernard. After a second blow, he ran away. He did not know that Hunt and Gordon were armed.

¶ 16 Ultimately, Fassl contacted an assistant State's Attorney who spoke with defendant. After that conversation, defendant agreed to make a videotaped statement. Although this statement

² The record indicates that Funches is also known as Darren Boyd.

repeated what defendant had previously told Fassl, defendant also said that while in the car he saw Hunt put a magazine into a rifle. This statement was published to the jury.

¶ 17 The jury convicted defendant of felony murder. The defense then filed a motion for judgment notwithstanding the verdict, or in the alternative for a new trial, alleging that defendant was prejudiced by the introduction of gang evidence. The State responded that the men's gang affiliations linked the fight between defendant and Vernard to the shooting. The court denied the motion and sentenced defendant to 22 years in prison.

¶ 18 On appeal, defendant contends that he was denied a fair trial by the admission of gang evidence. Specifically, defendant contends that the State failed to establish a gang-related motive for the shooting or the misidentification of the shooter, and that the testimony regarding Hunt's gang-related tattoos was served no purpose other than to prejudice the jury against him.

¶ 19 Our supreme court has determined that "any evidence which tends to show that an accused had a motive for killing the deceased is relevant because it renders more probable that the accused did kill the deceased." *People v. Smith*, 141 Ill. 2d 40, 56 (1990). Generally, evidence indicating that a defendant was a member of a gang or was involved in gang-related activities is admissible to show a common purpose or design or to provide a motive for an otherwise inexplicable act. *Smith*, 141 Ill. 2d at 58. However, because there may be a strong prejudice against street gangs, the trial court should take great care when exercising its discretion to admit gang-related testimony. *People v. Weston*, 2011 IL App (1st) 092432, ¶ 22 (Aug. 12, 2011). Evidence that a defendant is a member of a gang or is involved in gang-activity is admissible only where there is sufficient proof that "membership or activity in the gang is related to the crime charged." *People v. Strain*, 194 Ill. 2d 467, 477 (2000). "To ensure a careful exercise of discretion, a trial court should require the prosecution to demonstrate a clear connection between the crimes and the gang-related testimony." *Weston*, 2011 IL App (1st)

092432, ¶ 23. A trial court's evidentiary rulings regarding the admission of gang-related evidence are reviewed for an abuse of discretion. *People v. Johnson*, 208 Ill. 2d 53, 102 (2003).

¶ 20 Defendant contends that the State failed to establish a gang-related motive for the shooting when neither Vernard nor Evins testified that the shooting was gang related.

¶ 21 While the State does not have to prove motive, the State may introduce evidence which tends to show that a defendant had a motive for killing the victim. *Smith*, 141 Ill. 2d at 56. Here, the gang-related evidence explained why defendant engaged in a course of conduct that resulted in the victim's death and the shooting of Vernard. See *Smith*, 141 Ill. 2d at 58 (evidence indicating that defendant was involved in gang-related activities is admissible to provide a motive for an otherwise inexplicable act). Defendant was beaten by Vernard and his possessions taken after he stepped between Mycal and Vernard in order to protect Edwards, who belonged to a different gang. Defendant later gathered several friends, at least one of whom he knew was armed, and went to meet Vernard which resulted in the victim's death and Vernard's injuries. The evidence of the gang associations of defendant, Edwards, and Vernard explained the sequence of events leading up to the shooting. In other words, as defendant explained in his inculpatory statement Vice Lord Edwards and Apache Stone Vernard had a problem and defendant inserted himself into the situation. See *Strain*, 194 Ill. 2d at 477 (evidence that a defendant is involved in gang-activity is admissible only when there is sufficient proof that the gang-related activity is itself related to the crime at issue).

¶ 22 Evidence that tends to show that a defendant had a motive for killing a victim is relevant because it makes it more probable that the defendant did kill the victim. See *Smith*, 141 Ill. 2d at 56. While defendant did not actually shoot the victim or Vernard, the gang evidence was admitted to explain the motive behind the crime. In the instant case, the trial court did not abuse its discretion by admitting gang evidence (*Johnson*, 208 Ill. 2d at 102), when the testimony at

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trial established a connection between the victim's death and the gang associations of defendant, Edwards, and Vernard. See *Weston*, 2011 IL App (1st) 092432, ¶ 23 (the State must demonstrate a clear connection between the crime and the gang-related testimony). As the trial court did not err in the exercise of its discretion, defendant's claim must fail. *Johnson*, 208 Ill. 2d at 102.

¶ 23 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.