
IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
Plaintiff-Appellee,)	Of Cook County.
v.)	
KELLY PEARSON,)	No. 09 CR 20466
Defendant-Appellant.)	The Honorable
	Domenica A. Stephenson,
	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by allowing the prosecution to present evidence of the defendant's gang affiliation and a gang-related dispute that led to a fatal shooting. The evidence sufficiently supported the verdict holding the driver accountable for the acts of his passenger, a member of the same gang, in a drive-by shooting.

¶ 2 A jury found Kelly Pearson guilty of murder, holding him accountable for Keith Pearson's act of shooting towards a bus stop. We find that the evidence supports the verdict, and the trial court did not abuse its discretion by permitting gang-related evidence and argument. Therefore, we affirm the trial court's judgment.

¶ 3

BACKGROUND

¶ 4

On July 6, 2009, Kelly drove a car owned by his girlfriend, Veronica Estudillo, carrying as his passengers Kelly's twin brother, Keith, and their friend Terrence Binion. Near the intersection of Jackson Boulevard and St. Louis Avenue, a car pulled up next to Estudillo's car, and a gun from the passing car discharged nine or ten bullets into Estudillo's car, killing Binion and injuring Kelly.

¶ 5

Kelly told police the make and color of the car the shooter used, but he described the shooter only as a black man wearing a hoodie. Kelly admitted to police that he and Keith belonged to the Vice Lords street gang.

¶ 6

On October 7, 2009, around 8 p.m., Kelly drove Estudillo's car, with Keith as his passenger, through the intersection of Madison Street and Homan Avenue. At a bus stop near that intersection stood four persons: Terrance Burdine, Michael Morris, Natasha Howliet, and another man Burdine and Morris did not know. Kelly turned to head north on Homan, and Keith fired several shots out of the passenger side window towards the bus stop. One bullet hit and killed Howliet.

¶ 7

Keith called Curtis Pearson, a cousin of Keith and Kelly, from the car shortly after the shooting. Curtis agreed to meet Keith and Kelly at a gas station. The next day, Kelly took Estudillo's car to a parking lot and arranged for a mechanic to pick it up there and take it to the mechanic's home, several miles from Kelly's home. Kelly told Estudillo about the shooting and the location of her car.

¶ 8 Police officers obtained statements about the shooting from Burdine, Morris, and Curtis. An assistant State's Attorney wrote out statements that Burdine, Morris and Curtis signed. Keith made a videorecorded statement at the police station, admitting that he shot towards the bus stop. A grand jury indicted Keith and Kelly for murder. The trial court severed the cases and conducted separate simultaneous trials before two separate juries on the charges against Keith and Kelly.

¶ 9 Kelly testified at trial and admitted that Keith fired shots towards the bus stop from Estudillo's car while Kelly was driving the car. Kelly did not dispute the evidence that one of the shots Keith fired killed Howliet. Kelly introduced no evidence of justification for the shooting or mitigation of the offense Keith committed. Thus, the jury for Kelly's case needed to decide only whether the evidence showed beyond a reasonable doubt that the jury should hold Kelly accountable for Keith's act.

¶ 10 Burdine testified that on October 7, 2009, he walked with his friend Morris on Madison. When they reached Homan, Morris went to talk to Howliet, who was standing at the bus stop. Burdine saw Estudillo's car turn left to head north on Homan. He heard shots, but he did not see the shooter. Morris took off running after the shooting stopped.

¶ 11 Burdine admitted that he looked at a photo array at the police station after the shooting. He admitted that he signed a statement at the police station, but he testified that he did not make several of the statements attributed to him in the written statement presented at trial.

¶ 12 Morris testified that he associated with members of the New Breed gang. Morris said that the New Breeds had no dispute with the Vice Lords. Morris's testimony about the

shooting otherwise accorded with Burdine's. Like Burdine, Morris saw Estudillo's car turn slowly, and then he heard gunshots. Morris heard Howliet say a bullet hit her. When the shooting stopped, Morris ran for help. He did not see the shooter or anyone who rode in Estudillo's car. Morris testified that he had seen Estudillo's car "driving past Homan" around 3 p.m. the same day, several hours before the shooting.

¶ 13 Morris testified that some months before the shooting, he had seen the twins in Estudillo's car at a gas station. One of the twins approached him and said, "Lord, what you game." Morris explained that the twin meant he belonged to the Vice Lords, and asked for Morris's gang affiliation.

¶ 14 Morris admitted that he signed a statement at the police station, but he denied that the written statement accurately recorded what he said. Morris also admitted that he testified before the grand jury that indicted Keith and Kelly, but he said that the transcript of grand jury proceedings did not accurately record his testimony.

¶ 15 The court permitted a witness for the prosecution to read into evidence the handwritten statements Burdine and Morris signed, along with Morris's grand jury testimony.

¶ 16 According to Burdine's statement, Estudillo's car almost stopped as it went through the intersection at Madison and Homan. Burdine said he saw two men who looked alike in the car, looking toward the bus stop. He then saw the gun in the car's window, and he saw the shots fired in the direction of the bus stop.

¶ 17 Morris testified to the grand jury that he saw Estudillo's car come to a complete stop in the intersection at Madison and Homan. The passenger looked at Morris and Burdine and

started shooting. The car then drove off. Morris's handwritten statement effectively repeated his grand jury testimony. However, where Morris testified before the grand jury only that the passenger looked at him and Burdine, the handwritten statement said, "[a]fter the driver and passenger looked at [Morris] and the bus stop, [Morris] saw the passenger point a gun out of the front passenger window."

¶ 18 Estudillo testified that a day or so after October 7, 2009, Kelly told her that Keith had fired shots toward the bus stop at Madison and Homan. Kelly told Estudillo to expect police to question her about her car. Estudillo testified that Kelly told her to lie to police and tell them that the car had been repossessed. Police came to interview Estudillo on October 12, 2009. At first she told them her car had been repossessed, but then, later in the same interview, she disclosed the car's actual location. The grand jury transcript shows that Estudillo testified that Kelly told her that he had not expected Keith to start shooting. At trial, Estudillo said she did not remember what she testified to the grand jury.

¶ 19 Curtis refused to testify at trial. The trial court permitted the State to introduce into evidence Curtis's out of court statements. Curtis told an assistant State's Attorney that when Keith and Kelly came to meet him after the shooting, he told them they needed to get rid of the gun and the car. He helped Keith get rid of the gun.

¶ 20 Kelly testified that on July 6, 2009, he told police that members of the New Breed gang participated in killing Binion. He recognized the car as one a member of the New Breed drove. He did not know who shot Binion. Kelly returned to the police station to look at a

photo array on September 20, 2009. He identified a photograph as a picture of a person involved in the shooting. The identification did not lead to an arrest.

¶ 21 Kelly testified that on September 30, 2009, while he was driving Estudillo's car near the intersection of Grand Avenue and Hamlin Avenue, a car pulled up behind him and a member of the New Breeds in the car fired seven or eight shots at Kelly. One bullet hit the car, but none hit Kelly. Keith started carrying a gun for protection after September 30, 2009. Kelly drove the car with Keith, armed, as his passenger several times between September 30 and October 7, 2009, and no shootings occurred on those trips.

¶ 22 Kelly testified that on October 7, 2009, around 8 p.m., he was with Keith in Estudillo's car when Estudillo called him. He began driving up to Estudillo's home, but first he stopped by his grandmother's home on Adams, near Homan. When he saw no lights on, he decided to continue driving, going back to Homan via Madison. He stopped at the light at Madison and Homan. After the light changed and he started his left turn, he heard gunshots, and he saw Keith shooting the gun towards the bus stop. Kelly started cursing at Keith. Kelly said, "Why would you shoot out my girl car? The whole neighborhood know we be in this car. Everybody know that this my girl car. I done drove this car in this neighborhood for the past two years." Kelly added that as he yelled at Keith, he slowed the car, still in the intersection. Keith said, "go, go, go, go," and Kelly, in a panic, drove. He got to the expressway, then he heard Keith calling Curtis. Kelly drove to meet Curtis and drove off with Keith after the meeting. Kelly testified that he told Estudillo he left the car with a mechanic, and he never

told her to lie to police. Kelly testified that he did not expect Keith to shoot at anyone, and they had no plan to shoot anyone.

¶ 23 On cross-examination, Kelly testified that Vice Lords have no problems with New Breeds. The prosecutor asked whether Kelly personally had a problem with New Breeds, and Kelly answered:

"Me, per se, I didn't have no problem with anybody. It's just when people can't find other people, they get points off getting that other people. If somebody looking for some of my friends to shoot at and they can't get them, if they see us, they shoot at us, just to send a message.

Me, per se, I never had no beef with nobody."

¶ 24 Kelly also answered questions about his neighborhood in the following testimony:

"Q. Now, the area of Madison and Homan, there are New Breeds in that area, right?

A. On the 3300 block of Madison where the rowhouse is, yeah, they New Breeds.

Q. So you knew when you were driving that direction that you were driving towards the New Breeds, correct?

A. Yes, they on the other side of the street. Yes, on the other side of the boulevard.

* * *

Q. And so when you made that left onto Homan, you knew you were turning into the territory near the New Breeds, right?

A. No, that's not New Breed territory when I make the turn on Homan. They across Homan in the rowhouses. The Martin Luther King Plaza, that's their territory. Not me making a left-hand turn on Homan.

Q. So they're in the area?

A. Yeah. We [Vice Lords] in the area. They in the area."

¶ 25 Kelly admitted he did not kick Keith out of the car after the shooting. Kelly added, "I didn't want to rat my brother out. I didn't tell nobody."

¶ 26 Detective Marco Garcia testified that after July 6, 2009, Garcia tried several times to contact Kelly and Keith to discuss the murder of Binion. Several times Garcia went to their home address on Adams near Homan. Kelly finally came to the police station when police picked him up on September 19, 2009. He repeated his description of the car, and he still said the shooter was a black male wearing a hoodie. Garcia admitted that on September 20, 2009, Kelly identified a photograph as a picture of a man involved in the murder of Binion.

¶ 27 In closing, the prosecutor argued, "Keith and Kelly were riding around all day that day with that loaded 9-millimeter." The court overruled defense counsel's objection. The prosecutor continued:

"They're riding around all day in [Estudillo's] car with a loaded 9 millimeter, and they are riding in neighborhoods where, you know, they are having difficulty.

That car is getting shot up all over the place. Their best friend, [Binion], got shot July 6, 2009. What do you think is going to happen?"

¶ 28 In rebuttal, the prosecutor enlarged on the theme:

"[Howliet] is just the latest victim in this world of tit-for-tat gang violence that the defendant lives in. One day he is the victim, one day he is the shooter."

¶ 29 Again, the court overruled defense counsel's prompt objection, leading to the following argument:

"If somebody had a drill, if somebody had a tool, you know what their intent is. What is the purpose of a gun? It's to kill. ***

*** You put that same gun in a car with a team working together – a driver, passenger, shooter, driver, drive-by – you now have amplified the danger of that gun several times.

No intent? We haven't shown that he shares that same knowledge?"

¶ 30 The court overruled another objection, and the prosecutor continued:

"We have shown motive. What else do you need, ladies and gentlemen? This man over here has got his hair permanently parted because of a bullet. A bullet that was fired into a car, *** the same car that he was driving. New Breeds. Vice Lords. Same vicinity. Shot right around the corner where [Binion] was shot. Shot, pulls into the car, his girlfriend's car. You know what the intent was. Driving around that night, they had the gun in the car. What are they going to do?"

* * *

Suppose they did in fact hit the New Breeds, these guys wouldn't have a much different story. They would be bragging about what they did out there because they were working together."

¶ 31 The jury found Kelly guilty of murder. The trial court denied Kelly's posttrial motion and sentenced him to 30 years in prison, partly because "Kelly Pearson chose to drive [Keith] that night into the neighborhood where they knew they shouldn't go back to." Kelly now appeals.

¶ 32 ANALYSIS

¶ 33 Kelly argues on appeal that the evidence does not prove beyond a reasonable doubt that the court has grounds to hold him accountable for Keith's actions. "A person is legally accountable for another's criminal conduct 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)]." *People v. Dennis*, 181 Ill. 2d 87, 96 (1998). We review the evidence in the light most favorable to the prosecution, and we will not reverse the conviction if any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Cooper*, 194 Ill. 2d 419, 424-25 (2000).

¶ 34 The evidence showed that Keith and Kelly belonged to the Vice Lords, and they knew that members of the New Breeds shot at them in July and September 2009. Kelly knew Keith carried a gun when Kelly drove with him on October 7 to the intersection at Madison

and Homan, very near New Breed territory. The jury could infer that Kelly knew Keith intended to use the gun to retaliate against New Breeds for the shootings.

¶ 35 Kelly compares this case to *People v. Taylor*, 186 Ill. 2d 439 (1999). In *Taylor*, the defendant drove a passenger, knowing that the passenger carried a gun. The defendant had a minor traffic incident, and a man in the other car used a racial slur. The defendant, at his passenger's request, stopped his car. The passenger got out of the car, went to the other car and shot the victim. The passenger then returned to the defendant's car and the defendant helped the passenger escape. The *Taylor* court found that the evidence did not support an inference that the defendant knew the passenger would use the gun, and therefore the court reversed the conviction, which the trial court had based on a theory of accountability. *Taylor*, 186 Ill. 2d at 447.

¶ 36 The gang involvement and the prior shooting incidents distinguish this case from *Taylor*. While *Taylor* had no reason to know that his passenger would suddenly shoot someone after a minor traffic incident, Kelly had reason to think his twin brother intended to use his gun to retaliate against the New Breeds who had shot at them repeatedly. Moreover, Kelly deliberately drove to the intersection of Madison and Homan, not far from the scene of one of the prior shootings, and after looking towards the bus stop, where he and Keith saw at least one associate of the New Breeds, Kelly slowed almost to a stop in the intersection, giving Keith a better shot at the persons standing at the bus stop. Although the evidence does not show that Morris or Burdine shot at Kelly, Kelly explained that he and Keith could

retaliate for the shooting by shooting at friends of the persons who shot at them. As Kelly said, they could "get points off getting that other people."

¶ 37 After the shooting, Kelly drove off with Keith in the car, thereby helping Keith escape, and Kelly took Keith to meet with Curtis, who advised Keith and Kelly to get rid of the car and the gun. Kelly left the car with a mechanic who lived a few miles away from Kelly's home. Kelly never reported the shooting to police. Kelly continued to associate with his twin brother. Also, Estudillo testified that Kelly told her to lie to police about her car's location. Continued association with an offender after the offense, flight, and failure to report the offense count as factors that can raise an inference that an accused aided the offender in perpetration of the crime. *People v. Reid*, 136 Ill. 2d 27, 62 (1990). Here, as in *People v. Fernandez*, 2014 IL 115527, ¶¶ 13-17, the evidence supports an inference that Keith and Kelly formed a common plan to commit a crime. We find the evidence sufficient to support an inference that Kelly, before and at the time of the shooting, with intent to facilitate the shooting, aided Keith in the commission of the offense, so that the jury could find Kelly accountable for Keith's act of shooting Howliet.

¶ 38 Kelly also argues that the trial court abused its discretion when it permitted the prosecution to present gang-related evidence and when it overruled defense counsel's objections to the many references to gangs in closing argument. We review the trial court's evidentiary rulings for abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). The prosecution may introduce gang-related testimony into evidence to show a motive for an otherwise inexplicable act. *People v. Donegan*, 2012 IL App (1st) 102325, ¶ 73. The

prosecution here presented evidence that Kelly and Keith belonged to the Vice Lords gang, that members of the New Breeds gang shot at Kelly and Keith on several occasions, and that at least one of the persons at the bus stop towards which Keith shot associated with the New Breeds gang. Kelly explained that if gang members cannot find persons who have wronged them, they can "get points" by shooting at friends of the persons against whom they seek to retaliate. The evidence shows a motive for Keith's otherwise inexplicable act of shooting at the persons standing at the bus stop. We cannot say that the trial court abused its discretion by allowing the gang-related testimony into evidence.

¶ 39 Similarly, we find no reversible error in the rulings on the prosecutor's closing argument. Courts allow lawyers wide latitude in closing argument and counsel may argue to the jury facts and reasonable inferences from the evidence. *People v. Smith*, 141 Ill. 2d 40, 60 (1990). The prosecutor here argued for the permissible inference that Kelly and Keith, as members of one gang bent on retaliation against members of another gang, agreed to a plan to shoot at associates of the other gang. We cannot say that the trial court abused its discretion when it overruled defense counsel's objections to the argument. See *People v. Hairston*, 46 Ill. 2d 348, 372 (1970).

¶ 40 CONCLUSION

¶ 41 The evidence sufficiently supports the inference that Kelly agreed to help Keith find and shoot at associates of the New Breeds, and therefore the evidence supports the verdict holding Kelly accountable for the murder of Howliet. The trial court did not abuse its

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discretion in its evidentiary rulings and rulings on closing argument. Accordingly, we affirm the trial court's judgment.

¶ 42 Affirmed.