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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 Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07—CF—2771
)	
ROBERT MEZA,)	Honorable
)	George J. Bakalis,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Bowman concurred in the judgment.

ORDER

Held: (1) Based on the reliable statements of an accomplice, the police had probable cause to arrest defendant; (2) an accomplice's accusation, implied on the video of defendant's detailed confession, was so tangential that its admission, even if erroneous, did not rise to the level of reversible plain error or ineffective assistance of counsel.

¶ 1 Defendant, Robert Meza, was convicted by a jury of first-degree murder (720 ILCS 5/9—1(a)(1) (West 2006)) in the shooting death of Lorenzo Salazar-Cortez. He appeals, contending that (1) the trial court should have suppressed his confession because it was the product of his unlawful arrest and (2) he was denied his right to confront witnesses against him when a hearsay

statement accusing him of the crime was overheard on a DVD of defendant's confession. We hold that police had probable cause to arrest defendant and that the admission of the hearsay statement was not reversible plain error or the product of ineffective assistance of counsel. Therefore, we affirm.

¶ 2 The State's theory was that Salazar-Cortez, who did not belong to a gang, was the unintended victim of a gang war between the Latin Kings and the Imperial Gangsters in the Highview neighborhood of Addison. Members of the Imperial Gangsters intended to shoot one of twin brothers—both Latin Kings—who lived in the neighborhood, but inadvertently killed Salazar-Cortez who lived next door.

¶ 3 Defendant was eventually arrested in connection with the crime and gave a videotaped confession. Before trial, he moved to quash his arrest, alleging that the police lacked probable cause, and to suppress the confession as the product of that illegal arrest. The following evidence was adduced at the hearing on defendant's motion.

¶ 4 Shortly after the shooting, graffiti showing disrespect for the Latin Kings appeared on a nearby building. The graffiti contained a backward "K," which, according to expert testimony at trial, signified "King Killer." Police knew that the Imperial Gangsters had been trying to move into the Highview neighborhood, which had been Latin King territory. This led police to believe that the Imperial Gangsters were responsible for the shooting.

¶ 5 Several days later, police met with a paid informant, Candido Rosales. He told police that he had spoken with Antonio Aguilar, an Imperial Gangster from Addison. Aguilar allegedly told Rosales that the Imperial Gangsters were responsible for the Salazar-Cortez shooting and that a gang member named "Lazy" had drawn the graffiti that appeared after the shooting. ("Lazy" is defendant's street name.)

¶ 6 Rosales subsequently agreed to wear a wire and police obtained an overhear order. Rosales met with Aguilar and two other Imperial Gangsters, Carlos “Benzino” Ruiz and Jacinto Vasquez inside a van. This conversation was not recorded. However, at that time Ruiz showed Rosales a black 9-mm gun.

¶ 7 Three days later, Rosales had a recorded conversation with Aguilar in which they discussed the Addison shooting. Aguilar said that Benzino and Lazy were “stashing,” or hiding out, because of what happened. Aguilar said that they were hiding out because they were the “main Niggas.” Aguilar further said that Benzino did the shooting and that Lazy’s vehicle was used in it.

¶ 8 Aguilar stated that “we were going into Highview” and were “not leaving until we drop[ped] a flake.” (“Flake” is a term for a rival gang member.) Aguilar said that they intended to shoot one of the twins.

¶ 9 Around the same time, an officer spoke with an Imperial Gangster at Addison Trail High School. The student told the officer that a person named “Lazy” was responsible for the gang graffiti that appeared after the shooting and that Lazy’s real name was Robert Meza.

¶ 10 Police arrested Aguilar and interrogated him. He initially denied knowing anything about the shooting, but later told the officers that the Imperial Gangsters were responsible. He said that Lazy had dropped him off on the night of the shooting and had said that he had a few things to take care of. Aguilar added that Lazy was claiming the shooting, but Aguilar did not know whether Benzino was with him at the time.

¶ 11 Based on this information, Addison police officers arrested defendant in Joliet. During the ride to Addison, defendant allegedly made incriminating statements. At the police station, he gave an additional statement, which was videotaped.

¶ 12 At trial, a videotape of defendant's statement was played for the jury. Near the beginning, police told defendant that Aguilar had already implicated him in the offense. Defendant said that he wanted to hear the statement. The detectives then played a portion of Aguilar's interrogation on a laptop computer. On the video, although Aguilar's statements are barely audible, the detective's statements in response clearly imply that Aguilar implicated defendant as the shooter.

¶ 13 The jury found defendant guilty. The trial court sentenced him to 30 years' imprisonment plus a 15-year add-on for being armed with a firearm. This court granted defendant's motion to file a late notice of appeal.

¶ 14 Defendant contends that his statement should have been suppressed because he was arrested without probable cause. Alternatively, he argues that he was denied his right to confront witnesses when Aguilar's statement accusing him was played for the jury as part of defendant's own videotaped confession.

¶ 15 Defendant first contends that he was arrested without probable cause and, therefore, his confession should have been suppressed. Police may not arrest a suspect without probable cause. *People v. Townes*, 91 Ill. 2d 32, 37-38 (1982). Probable cause exists where the totality of the circumstances known to the arresting officers, at the time of the arrest, would cause a reasonably prudent person to believe that the suspect is committing or has committed a crime. *People v. Downey*, 198 Ill. App. 3d 704, 715 (1990). Moreover, all evidence, including tainted confessions, obtained as a result of an illegal arrest must be suppressed. *Dunaway v. New York*, 442 U.S. 200, 207 (1979); *People v. Melock*, 149 Ill. 2d 423, 436 (1992).

¶ 16 When considering a trial court's ruling on a motion to quash an arrest and suppress evidence, we defer to the trial court's factual findings, which we will not disturb unless they are against the

manifest weight of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). However, we review *de novo* the trial court's ultimate legal ruling. *Id.*

¶ 17 Here, we agree with the State that the police had probable cause to arrest defendant. The State properly focuses its argument on the totality of the circumstances, while defendant breaks the information down into component parts and tries to find fault with each individual piece.

¶ 18 Prior to arresting defendant, the police had recordings of Rosales talking with Aguilar, an Imperial Gangster, about the shooting. Aguilar said that defendant was “stashing,” or hiding out, because of what happened. Defendant was hiding because he was one of the “main Niggas” and his car was used in the crime. Moreover, another gang member told the police that defendant had drawn graffiti that appeared shortly after the crime and that claimed responsibility for it. After his arrest, Aguilar told the police that he, defendant, and Ruiz drove into the Highview neighborhood with the intention of shooting a rival gang member.

¶ 19 Defendant argues that “main Niggas” has no meaning. However, in the context of a conversation about a recent crime, and especially in light of Aguilar's comment that defendant was hiding out in the wake of the crime, police could reasonably interpret the remark to mean that defendant was one of the main participants in the shooting.

¶ 20 Defendant contends that the fact that his car was used in the crime does not necessarily mean that he was legally responsible for it. However, the issue here is the existence of probable cause, not proof beyond a reasonable doubt. See *People v. Rodriguez-Chavez*, 405 Ill. App. 3d 872, 876 (2010) (possible innocent explanations for the circumstances do not necessarily negate probable cause). Given that members of defendant's gang used defendant's car in the shooting of someone they thought was a rival gang member, the most likely inference is that defendant was at least aware of these facts. While it is possible that defendant's fellow gang members borrowed his car and returned

it to him without defendant knowing what they did with it, this explanation is unlikely. Thus, the fact that defendant's car was used in the shooting provides additional support for probable cause to believe that he was knowingly involved in the crime.

¶ 21 Defendant argues that Aguilar's statements were not reliable. The statement of an accomplice implicating another participant in the crime may establish probable cause to believe that the other person was involved. *People v. James*, 118 Ill. 2d 214, 225 (1987). However, there must be some indicia of reliability to support the accomplice's statement. *Id.* at 222. Reliability is assessed by considering whether the statement (1) is against the declarant's penal interest; (2) was made in response to promises of leniency or other inducements; and (3) was supported by corroborating facts learned through police investigation. *Id.* at 223-25.

¶ 22 Defendant contends that the statements Aguilar made while in custody were not reliable because they were exculpatory rather than incriminating. During his custodial interrogation, Aguilar claimed that defendant dropped him off and told him that he had "something to take care of." Nevertheless, Aguilar's earlier statements to Rosales clearly implicated himself in the offense. The police had probable cause to arrest defendant on the basis of those statements; Aguilar's later statements merely provided more detail. Moreover, additional factors support the reliability of Aguilar's custodial statements. It appears that they were not made in response to any inducement and were supported by other facts that the police already knew about the crime.

¶ 23 Defendant's second argument is that his right to confrontation was violated by the inclusion in his videotaped confession of Aguilar's statements accusing him of the crime. Initially, we note that defendant did not object in the trial court to the playing of Aguilar's statement. Thus, the question is whether the plain-error rule applies, or whether defendant received ineffective assistance of counsel. While the unintentional admission may have been erroneous, any error could not have

affected the outcome or the fairness of the trial. Thus, we find no reversible plain error (*People v. Piatkowski*, 225 Ill. 2d 497, 565 (2007)) or ineffective assistance (*Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

¶ 24 We agree with the State that Aguilar's statements were not admitted for their truth, but were relevant only as part of the process that led defendant to confess. See *People v. Ivory*, 333 Ill. App. 3d 505, 515 (2002) (summary of facts gleaned from accomplices' statements was admissible to explain why defendant decided to change his original story and confess). The prosecutor did not refer to Aguilar's accusations, much less suggest that they were substantive evidence of defendant's guilt. As the State points out, Aguilar's implication that defendant was the shooter is inconsistent with the State's theory of the case, that defendant was guilty by accountability and that Ruiz was the actual shooter.

¶ 25 This does not end the inquiry, however. Generally, testimony about an out-of-court statement offered for the limited purpose of explaining why the police conducted their investigation the way they did, rather than for the truth of the matter asserted, is considered nonhearsay and thus admissible. *People v. Robinson*, 391 Ill. App. 3d 822, 834 (2009). Similarly, such testimony is admissible to show its effect on the listener or explain the listener's subsequent actions. *People v. Feazell*, 386 Ill. App. 3d 55, 66 (2007). However, the testimony should be limited to showing how the officer conducted the investigation and should not put the substance of the out-of-court statements into evidence. *Robinson*, 391 Ill. App. 3d at 834. Here, the evidence goes beyond merely explaining why defendant decided to confess and includes the substance of the statement.

¶ 26 Nevertheless, the primary import of the video was defendant's own relatively detailed confession. It is virtually inconceivable that the jury would ignore defendant's own admissions and convict him on the basis of Aguilar's implication. As noted above, the State did not dwell on the

evidence or suggest that it substantively proved defendant's guilt. In fact, it tended to negate the State's theory that Ruiz was the shooter and defendant was merely an accomplice.

¶ 27 In *People v. Sample*, 326 Ill. App. 3d 914 (2001), which defendant cites, the "repetition of strong inferences that his codefendants implicated defendant in the crimes," the prosecution's use of those statements to build a substantive link in its case, and the State's repeated comments on the upcoming testimony during its opening statement led the court to conclude that the "boundaries set for the investigative process hearsay exception were breached." *Id.* at 924. Despite that, the court found that the error was harmless. *Id.* at 925. Here, the statements in question were far less central to the State's case than those in *Sample*. Thus, any error in their admission, inadvertent or not, did not rise to the level of reversible plain error or ineffective assistance of counsel.

¶ 28 The judgment of the circuit court of Du Page County is affirmed.

¶ 29 Affirmed.