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2012 IL App (3d) 100857-U

Order filed September 25, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois
)	
v.)	Appeal No. 3-10-0857
)	Circuit No. 06-CF-1899
PAUL QUINTERO,)	
)	Honorable
Defendant-Appellant.)	Robert P. Livas,
)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in admitting evidence of the defendant's prior bad acts because it was relevant to show the defendant's motive for the instant offense of murder.

¶ 2 Following a jury trial, the defendant, Paul Quintero, was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 2000)) and sentenced to a term of natural life in prison. On appeal, the defendant contends that the trial court committed reversible error in allowing the State to

present evidence that he hit Cynthia Limon, the mother of his child, because such evidence was not relevant to show motive for the instant offense. We affirm.

¶ 3

FACTS

¶ 4 On July 26, 2006, the defendant was charged with two counts of first degree murder for the shooting death of Darnell Washington on November 2, 2001. 720 ILCS 5/9-1(a)(1), (a)(2) (West 2000). Following a jury trial in November 2007, the defendant was convicted of first degree murder and sentenced to a term of natural life in prison. On appeal, this court reversed the defendant's conviction and remanded the cause for a new trial, based on improper admission of other-crimes evidence regarding the defendant's involvement in a prior murder in order to show his identity and *modus operandi*. *People v. Quintero*, 394 Ill. App. 3d 716 (2009).

¶ 5 On remand, the State filed a motion *in limine* to admit other crimes, arguing for the admission of evidence that three to four weeks prior to the instant offense, the defendant assaulted Limon, and Washington, Dan Sutton, and Shannon Love intervened and physically assaulted the defendant. The State argued that such evidence was relevant to prove the defendant's motive. The trial court allowed the evidence to be admitted.

¶ 6 At trial, the State's evidence showed that the police found Washington on November 2, 2001, at about 4 a.m. on Farrell Road, a rural road in the outskirts of Joliet. Forensic evidence showed that Washington had been shot 11 times on the right side of his body from a range greater than two feet. Washington's injuries were consistent with being shot by someone outside of the front passenger door of a sport utility vehicle (SUV), while Washington was in the driver's seat. The parties stipulated that the fired bullets and cartridge cases found in and around Washington's body were nine-millimeter bullets and cartridge cases fired from the same firearm.

¶ 7 At about 12 p.m. on the same day, the police found Washington's Dodge Durango on fire in an industrial area in Joliet. The interior of the vehicle had extensive fire damage, but one shell casing was found near the front passenger seat, and two rounds were lodged in the driver's side of the vehicle.

¶ 8 Joseph Gonzales testified that he was originally charged with the first degree murder of Washington, but he reached a plea agreement with the State, which included testifying in the present case. Gonzales had also been convicted of arson for burning Washington's SUV. Gonzales testified that on November 1, 2001, he was at a bar in Joliet at about 10 or 11 p.m. with the defendant, Fernando Hernandez, and other friends, all of whom were Latin Kings. Washington was also at the bar. Despite a gang-related shootout a couple months earlier between Gonzales and Washington, Washington joined Gonzales's group at the bar.

¶ 9 When the bar closed, everyone went to a second bar, and they subsequently went to Christina Ortiz's house for a party. While at Ortiz's house, Gonzales heard a gunshot in the backyard. The defendant's brother was shooting a cat in the alley with a nine-millimeter handgun. The defendant took the gun away from his brother and put it in his waistband. Sometime later, the defendant told Gonzales that he wanted to kill Washington. Gonzales told the defendant that he wanted no part of it.

¶ 10 Gonzales testified that the defendant and Washington decided to go to another party, and Gonzales asked for a ride to his mother's house. Washington drove, the defendant was in the front passenger seat, and Gonzales was in the backseat behind Washington. Hernandez followed Washington's SUV in his own vehicle. Gonzales testified that the defendant directed Washington to Farrell Road, and then asked Washington to pull over so he could urinate. When

Washington pulled over, the defendant exited the vehicle, turned, and fired 10 to 14 shots at Washington.

¶ 11 After the shooting, the defendant got into Hernandez's car and left the scene. Gonzales took Washington's body out of the SUV, and he drove away in the SUV to catch up with the defendant and Hernandez. Gonzales eventually found some gasoline and drove the SUV to an industrial area, where he and the defendant set it on fire. The next day, Gonzales dismantled the gun that the defendant gave him and threw the pieces in the river.

¶ 12 Sutton testified that he and Love were Vice Lords, who were rival gang members of the Latin Kings. Washington was his friend, and was also a member of the Black P Stone Nation gang; however, that gang did not have an alliance with the Vice Lords. Sutton testified that in 1997, he and Love had shot at the defendant, but accidentally shot the defendant's father instead.

¶ 13 Sutton testified that three or four weeks prior to Washington's death, Sutton, Love, and Washington were near a gas station in their neighborhood. They saw Limon pull into the gas station. The defendant pulled in behind Limon's vehicle, reached through her window, and started hitting her. Sutton, Love, and Washington ran across the street to assault the defendant, who was a Latin King, because he was a rival gang member in their neighborhood. The defendant fled, but Sutton and Love chased him about one block into an alley and assaulted him. While this was occurring, Washington stayed with Limon at the gas station to comfort her.

¶ 14 Love testified that he participated in assaulting the defendant near the gas station, but he believed that Washington was across the street when it happened and did not participate. Love and Sutton did not assault the defendant because he was hitting Limon, but because he was in a rival gang. Will County Sheriff's Detective Bradley Wachtl testified that he interviewed Love on

November 2, 2001. Love told Wachtl that Sutton, Washington and he observed the defendant assaulting Limon, who was Washington's coworker, and they went to Limon's aid. Love also stated that Washington was a former member of the Black P Stone Nation.

¶ 15 The trial court instructed the jury that the evidence regarding other crimes may be considered only for the limited purpose of the defendant's motive. Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000). After deliberations, the jury found the defendant guilty of first degree murder. 720 ILCS 5/9-1(a)(2) (West 2000). The defendant filed a motion for a new trial, which the court denied. The court subsequently sentenced the defendant to a term of natural life in prison. The defendant appeals.

¶ 16 ANALYSIS

¶ 17 On appeal, the defendant argues that the trial court committed reversible error in allowing the State to present other-crimes evidence that the defendant hit Limon because it was not relevant to the defendant's motive for killing Washington.

¶ 18 Evidence regarding other crimes or bad acts, while not admissible to show the defendant's criminal propensity, are admissible to show motive. *People v. Chapman*, 2012 IL 111896; *People v. McSwain*, 2012 IL App (4th) 100619. However, even when relevant for a permissible purpose, evidence of other crimes may be excluded if its prejudicial effect substantially outweighs its probative value. *People v. Illgen*, 145 Ill. 2d 353 (1991).

¶ 19 We review a trial court's decision to admit other-crimes evidence for abuse of discretion. *People v. Young*, 381 Ill. App. 3d 595 (2008). An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.* Under this standard, we find that the trial court did not

abuse its discretion by allowing evidence that the defendant hit Limon, because this evidence was relevant to show the defendant's motive to kill Washington.

¶ 20 While any evidence which tends to show that an accused had a motive for committing murder is relevant, such evidence, to be competent, must at least slightly tend to establish the existence of the motive relied on. *People v. Norwood*, 362 Ill. App. 3d 1121 (2005). Here, the State attempted to prove that Washington's involvement in intervening between the defendant and Limon helped form the defendant's motive to kill Washington. Sutton's testimony established that Washington, Sutton, and Love all approached the defendant after he hit Limon, and while the defendant was being assaulted, Washington stayed to comfort Limon. This evidence tended to show the potential animosity the defendant had towards Washington. As such, the evidence was relevant to establish the defendant's motive to retaliate against Washington.

¶ 21 Despite the fact that Sutton testified that he and Love assaulted the defendant because he was a rival gang member, this reason was not verbalized to the defendant and would not have changed his motive to kill Washington for intervening. The evidence was also contradictory as to whether Washington was a gang member, and if so, whether his gang was a rival of the defendant's gang. This uncertainty rendered evidence of Washington's involvement in the intervention more relevant to the case. Furthermore, the probative value of the evidence that the defendant hit Limon was not substantially outweighed by the prejudicial effect on the defendant, because the assault on Limon occurred close in time to Washington's death, was only briefly presented at trial, and was limited in detail. See *Norwood*, 362 Ill. App. 3d 1121; *Illgen*, 145 Ill. 2d 353.

¶ 22 In addition, the trial court substantially reduced any prejudicial effect from this evidence by instructing the jury that the other-crimes evidence was allowed for the limited purpose of showing motive. See *Illgen*, 145 Ill. 2d 353. Accordingly, the trial court's decision to admit the other-crimes evidence was not arbitrary or unreasonable and did not constitute an abuse of discretion. See *Young*, 381 Ill. App. 3d 595.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 25 Affirmed.

¶ 26 JUSTICE McDADE, dissenting.

¶ 27 The majority has affirmed the conviction of defendant, Paul Quintero, for the first degree murder of Darnell Washington. In this direct appeal, Quintero alleges that the evidence in the case was closely balanced. He challenges the trial court's decision to allow the jury to hear testimony that Daniel Sutton, Shannon Love, and Washington had intervened when defendant was hitting his girlfriend at a gas station weeks before the shooting, claiming it was other crimes evidence that was not relevant for any legitimate purpose. For the reasons that follow, I dissent from the majority decision.

¶ 28 I have no quarrel with the pertinent law as set out in the majority order; I simply disagree with its application of that law to the facts of this case.

¶ 29 The majority has made no finding regarding the closeness of the evidence.

¶ 30 I would note that the evidence originally led the police investigating the murder to conclude that Joseph Gonzales was the killer. Following Washington's death, Gonzales had been arrested and charged with first degree murder in that shooting but that charge was negotiated

down. He also pled guilty in a separate case to arson for the burning of Washington's vehicle. At the time of defendant's second trial for the murder of Washington, Gonzales was on supervised release following a 15-year sentence on a reduced charge of discharging a firearm at Washington.

¶ 31 In his testimony, Gonzales recounted an incident occurring three or four weeks before the murder in which he, Salvidore Rangel, and Michael Pantoja had been involved in a shootout with Shannon Love, Daniel Sutton, and Washington, During that shootout, Gonzales was the only one who fired shots at Washington's vehicle.

¶ 32 At trial, Gonzales testified as part of a plea agreement that resulted in a sentence of 15 years rather than a potential life imprisonment, and he provided the only evidence directly linking defendant to Washington's murder. The bulk of the evidence against defendant, whether raised by Gonzales or other witnesses, was at least equally applicable to Gonzales. What direct evidence there might have been was, by his own admission, destroyed by Gonzales. It was Gonzales who removed Washington's body from the car, being careful to leave no fingerprints. It was Gonzales who initially hid the gun in the mailbox at his house, later removed it and placed it in a plastic bag, and later still chopped it into small pieces and disposed of the pieces in the river. It was Gonzales who gathered up all of the spent shells from the vehicle and threw them away. It was Gonzales who went to Rangel's house with blood on his face and clothes seeking a gas can and who drove off in Washington's car when Rangel did not have one.

¶ 33 Fernandez Hernandez, who figured prominently in Gonzales' account of the murder, testified by stipulation, that he was at home sick the night of the murder and was not with Rangel, Gonzales, or defendant at all. He had been convicted for involvement in the arson of

Washington's vehicle and received a five-year sentence after pleading guilty because "he was tired of the case dragging on for two years."

¶ 34 I am persuaded that the evidence against defendant was closely balanced.

¶ 35 In order to bolster what certainly appears to have been an ambivalent case against the defendant, the State attempted to establish that defendant had a motive to kill Washington. To this end, it sought to admit the testimony that is in issue in this appeal. The theory suggested in the State's brief is that Washington interceded in defendant's battery of his girlfriend and that that interference, coupled with intense gang rivalries, gave defendant a motive to murder Washington.

¶ 36 I am taking the descriptions of the incident from the State's brief and am basing my conclusions on the facts as set out in the State's argument. At defendant's trial, Daniel Sutton testified for the State, and recounted an incident that occurred a few weeks prior to Washington's murder. Sutton, Love, and Washington were together when they saw defendant drive up behind Cindy Limon's vehicle at a gas station and start hitting her through the window. They started to cross the street toward the station, defendant saw them and "took off running." Sutton and Love chased the defendant down the alley and beat him up while Washington stayed with Limon. Sutton and Love chased and attacked the defendant because they were Vice Lords and defendant, as a Latin King, was not supposed to be on their side of the neighborhood. Sutton testified that Washington was not a Vice Lord, nor was he involved in the fight.

¶ 37 Shannon Love testified for the defense. He was friendly with Washington and hung out with him three or four times a week. When asked to recall the incident at the gas station, Love testified that he and Sutton had fought with defendant and while Washington was present in the area, he did not participate in the fight. On direct examination, Love corroborated Sutton's

testimony for the State that the fight with defendant was unrelated to the altercation between defendant and Limon. He denied telling police that it was because defendant was hitting Limon and that testimony was contradicted by sheriff's detective Bradley Wachtl.

¶ 38 The testimony about Washington's gang affiliation was varied. He was described as a "former" member of the Black P Stone Nation, a member of that gang, *not* a member of the Vice Lords but friendly with some of their members. Except for Gonzales' allegation that defendant had told him that he wanted to kill Washington, *all* of the testimony about the evening/night of Washington's murder showed that he and defendant, together with a number of Latin Kings, had socialized with no evidence of animosity or hostility on either side. In fact, the essence of the testimony in this regard showed that Washington moved easily among the various gangs.

¶ 39 Regardless of their motive, the evidence is undisputed that both Sutton and Love beat up defendant during the incident. Washington had no part in the beating. The logical conclusion would seem to be that if *this* incident provided defendant with a motive to do violence to anyone, it would be Sutton and Love, not Washington. Moreover, a motive to harm Sutton and Love would gather strength from the fact that in an earlier attempt *to shoot defendant*, Sutton and Love had accidentally shot defendant's father. In its brief, the State says they killed the father.

¶ 40 It seems clear to me that the incident at the gas station reasonably suggested *no* motive for defendant to kill Washington and that testimony about it was not admitted for a legitimate purpose. Because I would also find that the evidence was closely balanced and the testimony about the gas-station incident was unfairly prejudicial, I would find defendant entitled to a new trial.