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FIFTH DIVISION
December 22, 2017

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. 13 CR 2580
)	
LAVANGELIS POWELL,)	The Honorable
)	Thomas Davy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶1 *HELD:* The evidence was sufficient to support the jury's verdict. The trial court did not abuse its discretion in allowing the State to introduce gang-related evidence.

¶2 Following a jury trial, defendant, Lavangelis¹ Powell, was found guilty of attempted first degree murder and aggravated battery with a firearm based on a theory of accountability.

Defendant subsequently was sentenced to 28 years' imprisonment. On appeal, defendant

¹ The record contains many documents listing defendant's first name as Lavangelist. We reference the spelling used by defendant in his appellate brief.

contends the State failed to prove him guilty beyond a reasonable doubt. Defendant additionally contends the trial court abused its discretion in allowing the State to introduce gang-related evidence. Based on the following, we affirm.

¶3

FACTS

¶4 The trial evidence demonstrated that, on December 6, 2012, defendant drove a dark-colored van to the area of 89th Street and Phillips Avenue in Chicago, Illinois. Codefendant, Larry Southern, rode in the back of the van with the rear sliding door ajar. When the pair observed the victim, Dejuan Robinson, riding a bicycle, defendant maneuvered the van to cut off the victim's progress. Codefendant then stepped out of the van and shot the victim nine times. The victim survived, but is a quadriplegic as a result of his gunshot injuries.

¶5 Prior to trial, the State filed a motion to allow the admission of evidence regarding the victim's and defendant's gang affiliations. Over defendant's objection, the trial court found the evidence admissible. In so doing, the court stated:

“Just in general in terms of gang evidence, citing from *People v. Williams*, ***
‘Gang-related evidence will not be excluded if it is otherwise relevant and admissible. Proof of gang affiliation or membership is admissible if such membership or affiliation is related to the crime charged. Such evidence is admissible to show a common purpose or design or to provide a motive for an otherwise inexplicable act. Further, proof of motive is always relevant in a criminal prosecution to show that a defendant committed the offense charged.’

* * *

In this particular case, the State is seeking through the testimony of [the victim] to introduce what appear[s] to be two separate areas. One, his previous dealings with

[defendant] in terms of [the] sale of drugs, that he would purchase them from [defendant] then sell them himself, and that there was apparently a change of suppliers and that he was no longer doing that.

And second, the specific incident as far as him being involved with Marshawn Green [and two others] going to the Black P Stone areas where Marshawn Green shot at one of their guys.

As far as the evidence relating to how [the victim] knew [defendant], I would limit that and exclude the State from going into the fact that he was a purchaser of drugs for resale, simply that he had known him for a period of time, that he would see him on a regular basis. The issue would appear *** to establish how he knew [defendant] and establish that identity.

As far as the issue of the previous incident, I do feel it is relevant to show that there was the tension between these two factions, that [the victim] would be basically admitting to being involved in a shooting against the Black P Stones, and that as a result of that, people who he believed to be members of that gang, specifically [defendant] and [codefendant], were involved in the particular incident where he was shot. This would not, as the State has said it will not be, become a mini-trial within a trial.

As far as the particular earlier shooting incident, [the victim] is obviously subject to cross-examination by both counsel in terms of any prior inconsistent statements that he made, either denying any connection to gangs at all or just an association with them.

But I would allow the State to introduce gang testimony as it relates to these individuals being in different factions as it related to the shooting approximately two months prior to [the victim] being shot. I would exclude them from going into any detail

unless it would somehow come up on cross-examination from [defendant], which it probably would not, the business relationship as far as marijuana.”

¶6 The victim testified that, on December 6, 2012, he was a junior at Hyde Park Academy and a member of the L City street gang, which was a faction of the Gangster Disciples. The victim stated that, in the latter part of 2012, the L City street gang was in conflict with other neighborhood gangs, specifically the Black P Stones.

¶7 According to the victim, he met his friend, Marshawn Green, after school on December 6, 2012. The pair proceeded to Phillips Avenue where they met another friend named “Dlo.” The victim then used Dlo’s bike to retrieve marijuana from his own house, which the group planned to smoke. While riding the bike back to meet his friends, the victim observed a black van on the next block over. The van turned toward him. At the time, the victim was on 89th Street and Phillips Avenue heading toward 88th Street and Phillips Avenue. According to the victim, he “didn’t think anything of [the van],” so he proceeded riding the bike toward his friends. As he did, however, the van approached him from behind and cut off his path. He was approximately five feet from the van.

¶8 The victim testified that the rear sliding door of the van was open when it approached and he observed codefendant, who he knew as “Larry,” crouched inside the van. The victim had known codefendant since 8th grade. The pair frequently played basketball together, on average several times per week. Codefendant was a member of the Black P Stone street gang. Due to the rising tensions between the gangs, the victim stated that his relationship with codefendant became less friendly. On the date in question, the victim observed codefendant pointing a silver, automatic handgun at him. The victim testified that there was nothing obstructing his view inside the van. He additionally observed defendant in the driver’s seat of the van. Defendant looked at

the victim “with a smirk on his face.” The victim knew defendant as “JuJu.” He met defendant through a mutual friend two years prior to the date in question. According to the victim, he and defendant saw each other twice a week and sometimes spoke to one another. Defendant also was a member of the Black P Stone gang. The victim characterized his relationship with defendant as less friendly due to the rising tensions between the gangs. The victim testified that he instantly recognized defendant and codefendant.

¶9 The victim continued that, after observing the handgun pointed at him, he dropped the bike in the street and “ran for his life.” The victim ran toward 89th Street and Phillips Avenue. While fleeing, he heard two gunshots. Almost immediately, the victim fell backwards and felt a burning sensation in his neck. While on the ground, the victim was unable to move his arms or legs. The victim then looked up and observed codefendant standing approximately ten feet outside of the van. The victim observed smoke escaping from the firearm in codefendant’s hand. Codefendant fired the weapon two more times.

¶10 The victim further testified that paramedics arrived on the scene and he lost consciousness before being transported to the hospital. After regaining consciousness while in the emergency room of the hospital, the victim spoke with two Chicago Police detectives. During their conversation, the victim identified “Larry” and “JuJu” as his assailants, reporting that codefendant shot him because “[codefendant] didn’t like him.” The following day, December 7, 2012, he viewed two photographic arrays. The victim informed the officers that neither defendant nor codefendant appeared in the first array. The victim, however, identified defendant in the second photographic array. Then, on December 10, 2012, he identified codefendant in a photographic array. Thereafter, on January 12, 2013, the victim reported to Chicago Police Detective Thomas Dineen that he did not recall identifying defendant in the

photographic array administered on December 7, 2012. In response, Detective Dineen provided another photographic array from which the victim identified defendant as the driver of the van. The victim added that he associated defendant with a black van. He recalled observing defendant in a black van on a prior occasion.

¶11 A number of officers testified that they secured the crime scene after the paramedics removed the victim from the area. No firearms evidence, such as bullets, expended shell casings, or fired cartridge cases, was found on the scene.

¶12 Chicago Police Detective Marc Delfavero testified that he spoke to the victim in the emergency room on December 6, 2012. Delfavero was told by hospital personnel that the victim was in critical, possibly fatal, condition. As a result, it was imperative for Delfavero to obtain a statement from the victim despite him being in extreme pain, screaming, and trembling. During their conversation, the victim told Delfavero that he was riding his bike when a dark-colored minivan drove toward him and attempted to run him over. The victim reported that the rear sliding door of the van opened and “Larry” exited the vehicle. The victim told Delfavero that he jumped off of the bike, but codefendant chased after him while shooting his firearm at the victim. The victim reported that the driver of the van was “JuJu.”

¶13 Detective Delfavero additionally testified that, on December 7, 2012, he conducted a computer search for individuals identified as “JuJu” and “Larry” living in the area of the shooting. Based on his search, Delfavero prepared two photographic arrays and returned to the hospital. Delfavero presented the two photographic arrays to the victim in the presence of his mother. Prior to doing so, the detective read the photograph advisory form to the victim. The victim was unable to sign the form due to his paralyzing injuries from the nine gunshot wounds;

therefore, the victim's mother signed the form on his behalf. According to Delfavero, the victim identified defendant as the driver of the black minivan in the second photographic array.

¶14 The detective also interviewed Green on December 7, 2012, at the hospital. Delfavero explained that he was attempting to learn the identity of "Larry." After speaking to Green, Delfavero created an additional photographic array. Delfavero testified that he went back to the hospital on December 10, 2012, to show the victim that array. The victim's mother was not present when Delfavero first arrived with his partner; however she arrived while they were administering the array. Prior to doing so, the victim was presented with the photo advisory form again. The victim's mother signed the form on his behalf. Delfavero's partner signed the form as well. The victim identified a photograph of codefendant as "Larry," the individual that shot him.

¶15 Delfavero finally testified that he returned to the hospital on December 14, 2012. During that interview, the victim stated that five individuals were present at the time of the shooting, Green, Dlo, Theo, Cintay, and O. Delfavero testified that he spoke only with Green because he was unable to locate the other individuals. According to Delfavero, the victim reported the shooting involved a gang feud. The victim stated that defendant and codefendant were Black P Stones and he was associated with some Gangster Disciples. The victim did not admit he was a member of the gang.

¶16 Defendant was arrested on January 12, 2013. Chicago Police Officers Malista Oware and Maurice Daniel testified regarding defendant's arrest. Officer Oware testified that she was on patrol around 1 a.m. on January 12, 2013, when she and her partner observed a Pontiac Grand Am being driven erratically at a high rate of speed. The officers activated the emergency equipment, but the vehicle continued moving faster and weaving and turning. According to Officer Oware, an unknown person jumped out of the vehicle and fled on foot. The officers

radioed for assistance and continued to follow the vehicle for seven or eight blocks before ending the chase to prevent further accidents. Officer Daniel received the call for assistance at approximately 1 a.m. on that date. Officer Daniel and his partner observed a Pontiac Grand Am pass at a high rate of speed and ultimately crash. Officer Daniel approached the crashed vehicle and retrieved defendant from the driver's seat. Defendant was placed under arrest.

¶17 Detective Dineen testified that, on January 12, 2013, he was assigned to investigate the shooting. Detective Dineen knew that defendant had been arrested. The detective proceeded to the Rehabilitation Institute of Chicago, where the victim had been relocated after the hospital, in order to interview him. The victim advised Detective Dineen that he did not recall viewing the photographic array on December 7, 2012. The detective then left the rehabilitation facility to create a new photographic array at the police station. Detective Dineen returned to the rehabilitation facility later in the day with the new array. He read the victim the photo advisory form and the victim's mother signed the form on his behalf. Detective Dineen then showed the array to the victim. The victim positively identified defendant as the driver of the van. The victim opined that he was shot because he spent time with the Gangster Disciples street gang and the gang was feuding with the Black P Stones. The victim indicated that defendant and codefendant were members of the Black P Stones. The victim denied being a gang member. The victim added that he had observed defendant "in a black van once before in December."

¶18 The parties stipulated that, if called, Doctor Kimberly Nagy would testify that she examined and treated the victim at the hospital on December 6, 2012. Doctor Nagy would testify the victim suffered nine gunshot wounds: four to the neck, one to the back, two to the flank and pelvis, and two to the wrist. The victim could not move his limbs and "had altered sensation with no sensation below the level of his nipples." Based on imaging tests, Doctor Nagy would testify

that the victim was diagnosed with quadriplegia at the C5 level. Doctor Nagy additionally would testify that blood testing completed at the hospital revealed that the victim had benzodiazepine and cannabinoids in his system, along with alcohol in an amount less than 10 to 30 milligrams per deciliter.

¶19 Green testified for the defense that, on the date of the shooting, he was with the victim near 89th Street and Phillips Avenue. The victim had gone home to change his clothes. In route to return, Green observed the victim riding a bicycle toward him. Green also observed a van approach the victim. Green described the van as “kind of dark” green. He was unable to identify the driver; however, he observed an individual exit the van and shoot the victim. Green denied seeing codefendant, whom he knew, on the date in question. According to Green, he was unable to view the shooter’s face. He only observed the shooter’s outline. Green testified that the shooter was wearing a hoodie and was tall and heavier, approximating he was 6 feet, 3 inches and 210 pounds.

¶20 Green testified that, on December 9, 2012, Delfavero interviewed him for a second time. The detective presented Green with a photo advisory form, which Green signed. Green identified codefendant in the photographic array as the “Larry” identified by the victim. Green additionally identified codefendant in a lineup on December 14, 2012. Green again explained that he merely identified codefendant based on the victim’s identification of the shooter. Green insisted he did not observe the shooter’s face. Green, however, admitted he never told the police that codefendant was not the shooter. Green further admitted he was serving a 12-year sentence for armed robbery.

¶21 The jury ultimately found defendant guilty of attempted first degree murder and aggravated battery with a firearm. The trial court denied defendant’s motion for a new trial. The

court subsequently sentenced defendant to 28 years' imprisonment on the more serious offense of attempted first degree murder only pursuant to the one-act, one-crime doctrine. Defendant's motion to reconsider his sentence was denied by the court. This appeal followed.

¶22

ANALYSIS

¶23

I. Sufficiency of the Evidence

¶24 Defendant first contends the State failed to prove him guilty of the charges beyond a reasonable doubt.

¶25 A challenge to the sufficiency of the evidence requires a reviewing court to determine “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.” (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is not the reviewing court's function to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, it is for the trier of fact, in this case the jury, to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). In order to overturn a judgment, the evidence must be “so unsatisfactory, improbable or implausible” to raise a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶26 Defendant was convicted based on a theory of accountability. A person is legally accountable for the conduct of another if “[e]ither before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense.” 720 ILCS 5/5-2(c) (West 2012). This court has instructed, “[w]here one attaches himself to a group bent on

illegal acts which are dangerous or homicidal in character, or which will probably or necessarily require the use of force and violence that could result in the taking of life unlawfully, he becomes accountable for any wrongdoings committed by other members of the group in furtherance of the common purpose, or as a natural or probable consequence thereof even though he did not actively participate in the overt act itself.” *People v. Morgan*, 39 Ill. App. 3d 588, 597 (1976).

The Illinois Supreme Court has further instructed:

“Mere presence of a defendant at the scene of a crime does not render one accountable for the offense. [Citation.] Moreover, presence at the scene plus knowledge that a crime was being committed, without more, is also insufficient to establish accountability. [Citation.] Nevertheless, active participation has never been a requirement for the imposition of criminal guilt under an accountability theory. [Citation.] One may aid and abet without actively participating in the overt act. [Citation.]

A defendant may be deemed accountable for acts performed by another if defendant shared the criminal intent of the principal, or if there was a common criminal plan or purpose. [Citations.] Words of agreement are not necessary to establish a common purpose to commit a crime. The common design can be inferred from the circumstances surrounding the perpetration of the unlawful conduct. [Citations.] Proof that defendant was present during the perpetration of the offense, that he maintained a close affiliation with his companions after the commission of the crime, and that he failed to report the crime are all factors that the trier of fact may consider in determining the defendant’s legal accountability. [Citation.] Defendant’s flight from the scene may also be considered in determining whether defendant is accountable. [Citation.] Evidence that defendant voluntarily attached himself to a group bent on illegal acts with knowledge of

its design also supports an inference that he shared the common purpose and will sustain his conviction for an offense committed by another. [Citation.]” *People v. Taylor*, 164 Ill. 2d 131, 140-41 (1995).

¶27 We find, after viewing the evidence in a light most favorable to the State, that the evidence was sufficient to support the jury’s verdict. The State’s evidence showed defendant drove with codefendant in a van to an area where the victim and his friends spent time after school. When defendant spotted the victim riding a bicycle, he maneuvered the van to impede the victim’s progress. Defendant then stopped the van while he waited and watched codefendant. Codefendant was crouched in the back seat with the sliding door open and was armed with a firearm. The victim described having a clear view of codefendant and defendant before jumping off of his bike to seek safety. When the victim looked at defendant, defendant responded with a “smirk.” Defendant remained in the driver’s seat while codefendant exited the vehicle and shot the victim nine times. Two of the shots were fired after the victim had fallen to the ground. Defendant continued to wait for codefendant to return to the vehicle before fleeing the scene. Defendant did not report the events to the police nor take any action to assist the victim. In sum, defendant’s actions allowed codefendant to repeatedly shoot the victim, resulting in the victim’s quadriplegia. We conclude that any rational trier of fact would find codefendant intended to commit first degree murder and aggravated battery, and defendant shared in that common purpose.

¶28 Defendant argues the evidence failed to support the jury’s verdict where the victim was the only eyewitness and he had little or no opportunity to observe the driver of the van. Defendant maintains the victim testified inconsistently regarding whether he viewed the van driver. Defendant additionally argues the victim was impaired at the time of the shooting and

was focused on codefendant and the handgun. Defendant further insists the victim incorrectly identified codefendant's handgun and the color of the van. Defendant posits that there was no additional evidence connecting defendant to the shooting.

¶29 It is well established that a single eyewitness identification is sufficient to sustain a conviction. *People v. Johnson*, 114 Ill. 2d 170, 189 (1986). Illinois courts use five factors established by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188 (1972), to evaluate the reliability of an identification. *Slim*, 127 Ill. 2d at 307-08. The *Biggers* factors include: (1) the witness' opportunity to view the suspect during the offense; (2) the witness' degree of attention; (3) the accuracy of any prior descriptions provided; (4) the witness' level of certainty at the time of the identification procedure; and (5) the length of time between the crime and the identification. *Id.* (citing *Biggers*, 409 U.S. at 199). As with other challenges to the sufficiency of the evidence, it is the function of the trier of fact to assess the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence. *People v. Romero*, 384 Ill. App. 3d 125, 132 (2008). "Whether eyewitness testimony is trustworthy is typically within the common knowledge and experience of the average juror." *Id.*

¶30 After reviewing the victim's identification testimony in conjunction with the *Biggers* factors, we conclude the testimony was reliable.

¶31 Turning to the first factor, the evidence demonstrated the victim had sufficient time to observe defendant. The victim testified that he had known defendant for two years prior to the shooting. The victim described seeing defendant approximately twice a week over that period of time, sometimes in passing and sometimes in face-to-face discussions. On the date in question, when the van stopped in front of the victim, the sliding door was open and the victim had an unobstructed view inside the vehicle. He was approximately five feet from the van. The victim

described codefendant as crouching in the back seat near the open sliding door and defendant in the driver's seat. Before dropping his bike, the victim observed defendant look at him with a "smirk" on his face.

¶32 With regard to the second factor, the evidence demonstrated the victim's degree of attention was sufficient to identify defendant. The victim testified to the series of events in detail, including the distance he stood from the van, the respective positions of defendant and codefendant in the van, and defendant's facial expression. There was contradicting testimony presented regarding codefendant's firearm, such that it was not a semi-automatic where no spent shell casings were found on the scene, and regarding the color of the van, such that it was dark green instead of black. Notwithstanding, these minor inconsistencies or discrepancies in the testimony did not rise to the level of reasonable doubt. See *People v. Wesley*, 382 Ill. App. 3d 588, 592 (2008).

¶33 In terms of the third factor, the evidence does not demonstrate the victim provided a description of the assailants. However, prior to his surgery on the date of the shooting, the victim provided Detective Delfavero with a detailed account of the events that transpired. The victim identified the shooter as "Larry" and the driver as "JuJu." Then, the next day, the victim viewed two photographic arrays and identified defendant as the driver of the van in the second array. Over one month later, upon informing Detective Dineen that he had no memory of identifying defendant in the array administered on December 7, 2012, the victim viewed another photographic array and again identified defendant as the driver.

¶34 With respect to the fourth factor, the evidence demonstrated the victim's identification was positive and certain. The victim was consistent in his identification of the assailants: even when his memory lapsed as to making the initial identification, he reidentified defendant in the

January 12, 2013, photographic array. Simply stated, he never wavered in identifying defendant as the driver.

¶35 Finally, as to the fifth factor, the victim identified defendant the day after the shooting and again a little over one month later.

¶36 In sum, our review of the *Biggers* factors demonstrates the victim's identification testimony was reliable. The jury was charged with assessing the victim's credibility and resolving any alleged discrepancies or weaknesses in his identification testimony. See *Romero*, 384 Ill. App. 3d at 132. The jury found the victim to be reliable in this case. We, therefore, find the victim's testimony, along with the remaining evidence, was sufficient to support the jury's verdict.

¶37 II. Admission of Gang-Related Evidence

¶38 Defendant next contends the trial court abused its discretion in admitting evidence regarding his gang affiliation. Defendant argues there was no proof that gang membership was related to the crime or that gang membership motive was tied to him.

¶39 Our supreme court has advised 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). "It is generally held that evidence indicating the defendant was a member of a gang or was involved in gang-related activity is admissible *** to provide motive for an otherwise inexplicable act." *Id.* at 58. The standard for admitting gang evidence provides "evidence indicating a defendant is a member of a gang or is involved in gang-related 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). We review whether gang evidence was admitted properly for an abuse of discretion. *People v. Johnson*, 208 Ill. 2d 53, 102 (2003).

¶40 We find there was no error in the trial court's decision to admit gang evidence in this case. Prior to trial, the court granted the State's motion to admit gang-related testimony. The court limited the testimony to that which would provide context for the tensions between the street gangs. In particular, the trial court allowed admission of testimony regarding a prior shooting between the Gangster Disciples and the Black P Stones involving Green and the victim as motive for the shooting in question. The victim testified that he was associated with a faction of the Gangster Disciples street gang. He stated that he knew defendant and codefendant for two and four years respectively, both of whom were members of the Black P Stones street gang. The victim described playing basketball regularly with codefendant and seeing and talking to defendant on a regular basis. The victim, however, testified that his relationship with defendant and codefendant had become strained due to rising tensions between the Gangster Disciples and the Black P Stones. The victim testified that he reported to the detectives that codefendant shot him because he "didn't like him." Detectives Delfavero and Dineen additionally testified that the victim reported the shooting was related to a gang feud between the Gangster Disciples and the Black P Stones. The victim said that he associated with the Gangster Disciples and defendant and codefendant were members of the Black P Stones.

¶41 We find the testimony was relevant to explain an otherwise inexplicable shooting. See *Smith*, 141 Ill. 2d at 58. Although the victim did not expressly explain why the gangs were on bad terms, defendant had an opportunity to elicit that testimony on cross-examination, but failed to do so. Moreover, any general prejudice that attaches to gang membership was shared by the victim as well as defendant in this case. See *People v. Hendrix*, 250 Ill. App. 3d 88, 104 (1993)

(“[a]n accused may not insulate the trier of fact from his gang membership where it is relevant to a determination of the case, simply because prejudice attaches to that revelation”). In sum, we find the trial court did not abuse its discretion.

¶42 CONCLUSION

¶43 We affirm defendant’s conviction and sentence.

¶44 Affirmed.