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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 Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 14-CF-1607
)	
JOSE A. BECERRA,)	Honorable
)	Linda Abrahamson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BRIDGES delivered the judgment of the court.
Justices Hudson and Brennan concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s conviction for unlawful possession of a firearm by a street gang member is affirmed, for the State’s evidence was sufficient to establish that the Latin Kings are a “street gang” under the Act.

¶ 2 Following a bench trial in the circuit court of Kane County, defendant was convicted of unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(2) (West 2014)), unlawful possession of cannabis (720 ILCS 550/4(c) (West 2014)), and resisting a peace officer (720 ILCS 5/31-1(a) (West 2014)). The conviction of unlawful possession of a firearm by a street gang member was predicated on defendant’s membership in the Latin Kings. Defendant argues

on appeal that his conviction of that offense must be reversed because the State failed to prove beyond a reasonable doubt that the Latin Kings is a street gang. We affirm.

¶ 3

I. BACKGROUND

¶ 4 At defendant's trial, the State presented evidence that on September 4, 2014, an Aurora police officer conducted a traffic stop of a vehicle in which defendant was a passenger. Defendant was wearing black clothing and black and gold tennis shoes. Another passenger in the vehicle was a member of the Latin Kings. Defendant ran off, and the officer chased him. Defendant fell, and the officer observed him discard a handgun, which was later found to be loaded. Defendant was arrested and interviewed by police. After initially denying that he was a member of the Latin Kings, defendant told police that he had been "blessed" into the gang but was "beat out" of it a few months earlier.

¶ 5 Aurora police officer Ron McNeff testified as an expert in gangs, gang membership, and gang identification in Aurora. McNeff testified that the Latin Kings' colors were black and gold or yellow. One could become a member of a gang by being blessed in or beaten in. According to McNeff, to be blessed in, one "would *** have to gain the respect of a gang through *** a relative." In September 2014, the Latin Kings had approximately 150 members in Aurora. The Latin Kings had an established hierarchy, and the members engaged in a course or pattern of criminal activity including graffiti, drug dealing, beatings, shootings, and murder. Between September 2009 and September 2014, Latin Kings committed two or more offenses in Aurora. McNeff testified:

"So Latin King Andrew Bueno, Latin King Armando Delgado went on a shooting spree, I believe, in 2012. They were subsequently arrested and charged for that. Latin King

Christopher Contreras committed a murder for the gang against a rival member—or believed rival member.”

McNeff believed that the murder occurred in 2011. McNeff formed the opinion that defendant was a member of the Latin Kings. McNeff testified that the opinion was based on, among other things, gang contact information, defendant’s admission that he had been blessed into the Latin Kings, and his clothing when apprehended. It was stipulated that defendant did not have a firearm owner’s identification card in September 2014.

¶ 6

II. ANALYSIS

¶ 7 We review the sufficiency of the evidence under the standard of *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), as adopted by *People v. Collins*, 106 Ill. 2d 237, 261 (1985): when a reviewing court decides a challenge to the sufficiency of the evidence,

“ ‘the relevant question is 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.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson*, 443 U.S. at 319).

¶ 8 Section 24-1.8(a)(1) of the Criminal Code of 2012 (720 ILCS 5/24-1.8(a)(1) (West 2014)) provides:

“(a) A person commits unlawful possession of a firearm by a street gang member when he or she knowingly:

(1) possesses, carries, or conceals on or about his or her person a firearm and firearm ammunition while on any street, road, alley, gangway, sidewalk, or any other lands, except when inside his or her own abode or inside his or her fixed place

of business, and has not been issued a currently valid Firearm Owner's Identification Card and is a member of a street gang.”

¶ 9 For purposes of section 24-1.8(a)(1), “ ‘Street gang’ or ‘gang’ has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.” 720 ILCS 5/24-1.8(c) (West 2014). Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act (Act) (740 ILCS 147/10 (West 2014)) provides that the term “[s]treetgang” means “any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of 3 or more persons with an established hierarchy that, through its membership or through the agency of any member engages in a course or pattern of criminal activity.” Section 10 further provides:

“ ‘Course or pattern of criminal activity’ means 2 or more gang-related criminal offenses committed in whole or in part within this State when:

- (1) at least one such offense was committed after the effective date of this Act;
- (2) both offenses were committed within 5 years of each other; and
- (3) at least one offense involved the solicitation to commit, conspiracy to commit, attempt to commit, or commission of any offense defined as a felony or forcible felony under the Criminal Code of 1961 or the Criminal Code of 2012.” 740 ILCS 147/10 (West 2014).

The Act took effect in 1993.

¶ 10 Relying on *People v. Murray*, 2019 IL 123289, defendant argues that McNeff’s testimony was insufficient to establish that the Latin Kings have engaged in a “course or pattern of criminal activity.” At issue in *Murray* was whether the testimony of Detective David Dammon was

sufficient to prove that the Latin Kings were a street gang. A divided court found Dammon's testimony to be insufficient.

¶ 11 In *Murray*, the trial court allowed Dammon to testify as an expert. Dammon described his experience and training with respect to gang activity. He also testified about the sources of information about gang activity and the databases collecting that information. He “described how street gangs operate, their hierarchy, and their use of guns for the protection of drugs, cash, and themselves from rival gangs.” *Id.* ¶ 7 (opinion of Neville, J., joined by Burke, J.). He further testified that the term “ ‘gang banging’ ” (emphasis omitted) referred to activities including the commission of crimes benefitting a street gang. *Id.* He testified that the term “ ‘street gang’ ” is defined by statute and that “ ‘[i]t has to have one of three things.’ ” *Id.* ¶ 8. Dammon added that “ ‘[i]t’s two or more people with a recognized hierarchy and leader and their activities are criminal or at least a threat to society.’ ” *Id.* Dammon then testified that the Latin Kings is a street gang as defined by the Act.

¶ 12 The lead opinion in *Murray* framed the issue as whether the defendant's conviction could be sustained based on Dammon's expert opinion on the ultimate issue of whether the Latin Kings is a street gang. That opinion stated that Illinois Rule of Evidence 705(a) (eff. Jan. 1, 2011) “unambiguously requires that Dammon articulate the reasons for his opinion.” *Murray*, 2019 IL 123289, ¶ 31 (opinion of Neville, J., joined by Burke, J.). The lead opinion concluded that Dammon's testimony was inadequate:

“Dammon generally described in broad terms the types of information and facts on which his opinion was based, but he never explained his reasons as to why that information supported his opinion. Admittedly, Dammon was not obligated to bring forth the underlying facts and data upon which his opinion was premised, but merely identifying the

source of those facts and data, without explaining the reasons for his opinion, fails to prove the elements of the offense of unlawful possession of a firearm by a street gang member.”

Id. ¶ 31.

¶ 13 The lead opinion observed that, although Dammon testified about his familiarity with databases collecting information on gang activity, “he never explained the reasons or information and facts that supported his opinion [that the Latin Kings were a street gang], and he never connected his reasons or the information and facts to defendant to satisfy the statutory definition of ‘street gang.’ ” *Id.* ¶ 34. Adding that “Dammon did not identify the Latin Kings’ commission of particular offenses on certain dates” (*id.* ¶ 36), the lead opinion concluded that “[e]xpert opinions and inferences testified to under Rule 705, without testimony regarding specific crimes committed by the Latin Kings, do not establish a violation of the Act.” *Id.* ¶ 36.

¶ 14 The special concurrence agreed with most of the lead opinion’s analysis but did not agree with its conclusion that Rule 705 required Dammon to articulate the reasons for his opinion. *Id.* ¶ 57 (Kilbride, J. concurring, joined by Karmer, C.J.) The special concurrence concluded that it was unnecessary to consider “how, or even if,” Rule 705 applied. *Id.* ¶ 60. According to the special concurrence, “Detective Dammon’s testimony failed to establish critical parts of the State’s *prima facie* case by providing *some evidence* that the Latin Kings met the statutory definition of a ‘street gang.’ ” (Emphasis added.) *Id.* ¶ 61.

¶ 15 Defendant argues that, as in *Murray*, the evidence here was insufficient to establish that the Latin Kings is a street gang. Specifically, defendant argues that the State failed to prove that the Latin Kings engaged in a course or pattern of criminal activity. Echoing language from the lead opinion in *Murray*, defendant argues that “[t]he State did not provide any other specific crimes evidence showing the Latin Kings’ commission of particular offenses on certain dates.” Citing

id. ¶ 36 (opinion of Neville, J., joined by Burke, J.). While the cited language correctly construes the lead opinion’s criticism of the Murray evidence, it is not entirely clear that the lead opinion, as joined in by the special concurrence, requires dates certain for the specific crimes. See *id.* ¶68 (special concurrence of Kilbride, J., joined by Karmeier, J.)(concurring in majority’s judgment and analysis, with exception of portion addressing Rule 705). Immediately following the above cited language, the lead opinion further observes that “the State provided no other witnesses who testified to specific offenses committed * * * during the relevant time period that would satisfy the statutory definition of a ‘streetgang.’” *Id.* ¶ 36. Taking these sentences together, we find that the Murray majority requires the State to prove that the specific acts occurred within a five-year period of each other after the effective date of the Act. The State did so here with evidence that members of the Latin Kings committed a murder and went on a shooting spree within a five-year period and that both crimes took place after the Act took effect. This evidence is in stark contrast with Dammon’s testimony in *Murray*, which, as summarized in the lead opinion, described the characteristics of a street gang but completely failed to show that the Latin Kings possessed those characteristics.

¶ 16 Defendant also argues that McNeff did not know “the specifics” of the shooting spree and the murder committed in 2011 and 2012, respectively. In addition, defendant argues that McNeff did not explain the basis for his belief that those offenses occurred or that the perpetrators were Latin Kings. The argument is unpersuasive. McNeff testified as an expert, and

“[i]t is well-settled that an expert may give opinion testimony that relies on facts and data not in evidence, as long as the underlying information is of the type reasonably relied on by experts in the particular field.” *In re Commitment of Tenorio*, 2020 IL App (1st) 182608, ¶ 43.

Defendant does not contend that McNeff's testimony violated that principle. Accordingly, the State's evidence was sufficient to establish that the Latin Kings are a "streetgang" under the Act.

¶ 17

III. CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 19 Affirmed.