

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOHN KYLE CRANDALL,)	<u>NOT FOR PUBLICATION</u>
Appellant,)	
)	
)	
v.)	Case No. F-2017-08
)	
THE STATE OF OKLAHOMA,)	
Appellee.)	

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAY 10 2018

OPINION

LEWIS, VICE-PRESIDING JUDGE:

Appellant, John Kyle Crandall, was tried by jury and found guilty of Count 1, first degree murder, in violation of 21 O.S.Supp.2012, § 701.7(A); Count 2, knowingly concealing stolen property, in violation of 21 O.S.2011, § 1713; and Count 3, possession of a firearm after former conviction of a felony, in violation of 21 O.S.Supp.2014, § 1283, in the District Court of Tulsa County, Case No. CF-2016-2001. The jury found Appellant guilty after former conviction of two (2) or more felonies and sentenced Appellant to life imprisonment without parole in Count 1, ten (10) years imprisonment in Count 2, and twenty (20) years imprisonment in Count 3. The Honorable William D. Lafortune, District Judge, pronounced judgment and ordered the sentences served consecutively. Mr. Crandall appeals.

FACTS

Cody Carl wanted out of the Irish Mob,¹ and it cost him his life. On April 3, 2016, around 5:00 p.m., Cody's friend, Casey Caldwell, picked him up at a restaurant near 11th and Garnett in Tulsa. Casey's girlfriend was also in the truck. The three friends then went to several locations, including Cody's girlfriend's house. Early that evening, Cody asked Casey and his girlfriend to take him to a motel just off I-244 and Garnett Road. Cody told Casey he was going there to meet a brother, or fellow member, of the Irish Mob.

After several minutes in the motel, Cody and another man identified as the Appellant, John Kyle Crandall, came out together. Cody got in the front seat of Casey Caldwell's four-door pickup truck. Appellant took the seat directly behind him. Casey drove to a nearby convenience store. Appellant went inside, then came back out to the truck. Casey then drove back to the motel and pulled up near some doors where Appellant wanted to get out. Cody opened his front door so that Appellant's back door would open.

From the corner of his eye, Casey saw Cody appear to offer Appellant a handshake. Casey saw a brief flash and heard a popping sound. Cody fell back toward the pickup. Appellant ran away from the truck. Casey pulled Cody partially into the cab and quickly drove far enough away to get clear of the Appellant. Casey loaded Cody in the truck and drove back to Cody's girlfriend's house. She jumped in the truck and directed Casey to St. Francis Hospital, where Cody was treated for an apparent gunshot wound that entered

¹ The Irish Mob is a criminal prison and street gang with a specific history; distinctive marks, tattoos, clothing, and jargon; and rules of membership.

just above his left eye and traveled through his brain. Cody Carl did not survive the shooting.

Appellant was next seen several miles away, trespassing within the fenced perimeter of a private company near the railroad tracks. When a manager walked up to speak with him, Appellant said he had been fighting with his girlfriend and decided to walk along the nearby railroad tracks. The manager had already called police, and grew more suspicious from hearing Appellant's story about how he came to be inside the property. He directed Appellant to a room with no outside phone line and continued their conversation, stalling for police to arrive.

The manager at some point asked if he could pat Appellant down for security reasons. Appellant admitted that he was armed, and declined to hand over his weapon. The manager and another employee, by exchanging text messages and glances, contrived to grab the Appellant and take the gun from him. After allowing Appellant to buy a soda and pretending to escort him to the company gate, the two men grabbed Appellant, took his weapon, and later turned both over to police.

Investigators in the shooting of Cody Carl had, in the meantime, developed a suspect nicknamed "Tears." Tulsa police gang records associated that nickname with the Appellant, who was a certified Irish Mob member of high rank. Police soon learned that Appellant had already been arrested that evening for trespassing and carrying a weapon.

Early the following morning, Appellant waived his *Miranda* rights and agreed to an interview with investigators. After initially denying knowledge of the shooting or even knowing Cody Carl, he eventually admitted riding in the truck with Cody Carl, Casey Caldwell, and a female. He admitted his membership in the Irish Mob, and that he knew Cody Carl had violated the Irish Mob rules in some way. Appellant mentioned that Cody Carl might be subject to an "S.O.S" ("shoot on sight") order, directing other gang members to attack the victim if they saw him. Appellant denied shooting Cody Carl and claimed that Carl was still alive when Appellant got out of the truck.

The State presented video evidence that tended to contradict Appellant's account of events. At the scene of the shooting, police recovered a spent .380 caliber cartridge, which they matched by comparison to test cartridges fired by the .380 pistol seized from Appellant. That pistol had been stolen recently from the owner's car. The State also presented evidence that Cody Carl could not be excluded as the major contributor to a mixed DNA profile developed from clothing worn by Appellant on the day of the shooting.

ANALYSIS

Appellant argues in Proposition One that the erroneous admission of evidence of other crimes, wrongs, or bad acts deprived him of a fair trial. He preserved this claim by timely objecting that certain State exhibits admitted at trial were unfairly prejudicial and contained evidence of other crimes. We review the admission or exclusion of evidence over a timely objection for abuse of the trial court's discretion. *Pavatt v. State*, 2007 OK CR 19, ¶ 42, 159 P.3d

272, 286. An abuse of discretion is a clearly erroneous conclusion and judgment, contrary to the logic and effect of the facts presented. *C.L.F. v. State*, 1999 OK CR 12, ¶ 5, 989 P.2d 945, 946.

The challenged exhibits were jail “kites,” written messages from Appellant to another Irish Mob member in jail. In State’s Exhibit 40, Appellant tells another gang member to tell United Aryan Brotherhood (UAB) members who arrive on his pod to cover their tattoos or face violence for disrespecting the Irish Mob. He signed this message “UAB Killa.” In State’s Exhibit 42, Appellant worried that certain women might inform on the Irish Mob. He enclosed an article about some “Jrihars” (fellow members) being indicted. He also says it was a matter of time before he got caught because he’d been “hunting 4 Circle Necks” (UAB Members) every weekend with other gang members “Lil’Ph and YG.” In State’s Exhibit 43, Appellant professed loyalty to the gang and its members, saying he finds it “hard to say I’d Ride and Murtair (i.e., murder) 4 someone then the next day not F**k with em . . . Even Murtair for you lol.” He signed this message “ Always Rob’n.”

Appellant does not challenge the authenticity of the statements as his own. We initially note that these are admissions by a party and, if relevant, are properly admissible on that basis. 12 O.S.2011, § 2801(B)(2)(a). Evidence of a defendant’s other crimes, wrongs, or bad acts is not admissible to prove action in conformity therewith on a particular occasion, but can be admissible for other purposes, including proof of “motive, opportunity, intent, preparation,

plan, knowledge, identity or absence of mistake or accident.” 12 O.S.2011, § 2404(B).

Though the trial court admitted these statements as Appellant’s admissions, and under the *res gestae* exception for evidence of other crimes, *Baird v. State*, 2017 OK CR 16, ¶ 37, 400 P.3d 875, 885, Appellant’s statements indicating his membership and strong ties of loyalty and honor to the Irish Mob’s code are highly probative evidence of his motive for carrying out this apparently gang-related assassination. E.g., *Thompson v. State*, 2007 OK CR 38, ¶ 34, 169 P.3d 1198, 1209 (finding “gang context” of the case was fundamental to understanding defendant’s motive for shooting a defenseless victim who was running away from him). The trial court’s admission of these exhibits was not an abuse of discretion and did not violate Appellant’s right to a fair trial. Even if one or more of these exhibits contained evidence of “other crimes” (as opposed to evidence of Appellant’s willingness to commit gang-related crimes), the remaining evidence connecting Appellant to this sudden, deliberate shooting of an unarmed victim renders any error harmless beyond a reasonable doubt. Proposition One is denied.

In Proposition Two, Appellant claims his convictions for knowingly concealing a stolen firearm, and being a felon in possession of the same firearm, punish him twice for a single criminal act in violation of 21 O.S. 2011, § 11, which provides in pertinent part:

An act or omission which is made punishable in different ways by different provisions of this title may be punished under any

of such provisions . . . but in no case can a criminal act or omission be punished under more than one section of law.

Because Appellant failed to object at trial, we review for plain error only. Appellant must therefore show a plain or obvious section 11 error affected the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. This Court will correct plain error when it seriously affects the fairness, integrity, or public reputation of the proceeding. *Id.*

The Court explained in *Davis v. State*, 1999 OK CR 48, ¶ 13, 993 P.2d 124, 126-127, that our section 11 analysis focuses “on the relationship between the crimes.”

If the crimes truly arise out of one act . . . then Section 11 prohibits prosecution for more than one crime. One act that violates two criminal provisions cannot be punished twice, absent specific legislative intent. This analysis does not bar the charging and conviction of separate crimes which may only tangentially relate to one or more crimes committed during a continuing course of conduct.

Where there are a series of separate and distinct crimes, section 11 is not violated by separate punishments. *Ziegler v. State*, 1980 OK CR 23, 610 P.2d 251, 254.

In *Sanders v. State*, 2015 OK CR 11, 358 P.3d 280, this Court found a convicted felon’s possession of a stolen firearm was a single criminal act, and could not support punishment for both the crime of knowing concealment of the stolen firearm and the crime of being a felon in possession. In *Sanders*, the Appellant was discovered in possession of the stolen firearm at his residence, and both counts charged him with crimes occurring on the same day. The

Court found that section 11 was violated by the two punishments, and reversed the conviction for knowingly concealing the stolen firearm with instructions to dismiss.

The State attempts to distinguish *Sanders* by characterizing Appellant's possession of the gun since its initial theft on March 27, 2016, and its subsequent possession at the time of his seizure by private citizens on April 3, 2016, as involving a "temporal break" sufficient to make these crimes "separate and distinct" for purposes of section 11. However, the State confuses a "temporal break" between two separate incidents and a temporal break in his actual possession of the weapon.

In *Hancock v. State*, 2007 OK CR 9, ¶¶ 116-117, 155 P.3d 796, 823-24, the appellant raised both section 11 and double jeopardy challenges to his convictions for felonious possession of the same weapon on two occasions, six months apart. The Court found in *Hancock* that the appellant's felonious possession of the same firearm in Oklahoma County in April, 2001, and again in Logan County in October, 2001, raised the inference, in the absence of contrary evidence, that he continuously possessed the weapon in ongoing violation of section 1283. Hancock's two convictions for possession of the weapon in both counties violated double jeopardy.

Absent any evidence that Appellant surrendered control of the pistol between its theft on March 27 and the shooting on April 3, 2016, he was *both* knowingly concealing that pistol *and* feloniously possessing it continuously, no less than the defendants in *Sanders* and *Hancock*. The two crimes "truly arise"

out of Appellant's continuous criminal possession of a stolen pistol. We therefore reverse Count 2, knowingly concealing stolen property, and remand with instructions to dismiss.

In Proposition Three, Appellant argues that trial counsel rendered ineffective assistance of counsel by failing to: (1) request redaction of references in Appellant's taped interview to other Irish Mob murders; and (2) object to multiple punishments for a single criminal act, as argued in Proposition Two. We review this proposition under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), requiring that Appellant show that counsel performed deficiently, and that such deficient performance prejudiced the defense, in the form of a reasonable probability that but for counsel's deficient performance, the outcome would have been different. *Id.*, 466 U.S. at 687, 104 S.Ct. at 2064.

Counsel failed to request redaction of a portion of Appellant's taped interview with police in which the investigator made reference to two other Irish Mob murders. Appellant acknowledged that he knew about those murders because the suspects were also in jail. The investigator then referred to Appellant as the fifth suspect in jail under arrest for an Irish Mob murder. We find that even assuming counsel was deficient in failing to request that these statements be redacted, Appellant shows no reasonable probability of a different outcome in either the jury's finding of guilt or the sentences imposed.

This trial involved pervasive references to the Irish Mob affiliations of both the Appellant and the victim. Appellant did not deny his membership in

the Irish Mob. Appellant admitted that he was present at the scene of the shooting, and that he knew that the victim was out of favor with the Irish Mob. Appellant possessed the murder weapon after the crime, and had the victim's DNA on his clothing. His statements indicated his willingness to commit murder and other crimes for the Irish Mob. He had eight prior felony convictions when he committed these crimes.

The fact that police had arrested other Irish Mob members in other recent murders had comparatively minor relevance, and the remaining evidence so thoroughly incriminates Appellant that no reasonable probability of a different outcome appears, even when the arguably erroneous evidence is excluded. Because Appellant's second claim, alleging deficient performance related to the two convictions challenged in Proposition Two, is rendered moot by our reversal of Count 2, he is unable to show that counsel's allegedly deficient performance resulted in any *Strickland* prejudice. Proposition Three is therefore denied.

DECISION

The Judgment and Sentence in Counts 1 and 3 is **AFFIRMED**. Count 2 is **REVERSED** and **REMANDED** with instructions to dismiss. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
HONORABLE WILLIAM D. LAFORTUNE, DISTRICT JUDGE**

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OPINION BY LEWIS, V.P.J.
LUMPKIN, P.J.: Concur in Results
HUDSON, J: Concur
KUEHN, J.: Concur
ROWLAND, J.: Concur

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