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# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2016

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Ex parte Jacques Maurice Boone

PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF CRIMINAL APPEALS

(In re: Jacques Maurice Boone

v.

State of Alabama)

(Montgomery Circuit Court, CC-14-1080;  
Court of Criminal Appeals, CR-14-1091)

MURDOCK, Justice.

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Jacquees Maurice Boone was convicted of attempted murder, see Ala. Code 1975, §§ 13A-6-2 and 13A-4-2; he was sentenced as an habitual felony offender to life imprisonment. On appeal to the Court of Criminal Appeals, Boone argued that the Montgomery Circuit Court ("the trial court") erred in admitting evidence that he was affiliated with a "gang." The Court of Criminal Appeals affirmed Boone's conviction and sentence in an unpublished memorandum, reasoning that the evidence was relevant under Rule 404(b), Ala. R. Evid., to prove motive. Boone v. State (No. CR-14-1091, Dec. 11, 2015), \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2015) (table). This Court granted certiorari review; we now reverse and remand.

#### I. Facts and Proceedings Below

The evidence at trial tended to show the following: On the night of March 29, 2014, Alondre Cooley, the victim, was walking down a neighborhood street in west Montgomery. Boone and his friend "Geronimo" were in a vehicle being driven by Geronimo. Geronimo drove onto the street and slowed down when they saw Cooley. Cooley recognized Boone in the passenger side of the vehicle because Cooley had known Boone since childhood. Boone fired one shot, which hit Cooley in the

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face. Cooley spent three to four months in the hospital and suffered serious, permanent injuries.

On appeal, Boone's sole argument was that the trial court erred by admitting the evidence indicating that Boone was affiliated with a "gang" because, he says, that evidence was "not relevant" and was "presumptively prejudicial." The State contended that the evidence was admissible under Rule 404(b)<sup>1</sup> because it was relevant to show Boone's motive and that the probative value of the evidence outweighed any prejudicial effect. See Rule 403, Ala. R. Evid.<sup>2</sup>

Boone points to two occasions during trial when the State referenced Boone's alleged affiliation with a gang. During opening statements, the prosecutor stated that Boone was associated with a person named Richard Freeman and that Freeman was a member in a gang called the "700 Group."

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<sup>1</sup>Rule 404(b) provides, in pertinent part:

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive ...."

<sup>2</sup>Rule 403 provides, in pertinent part, that, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...."

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Defense counsel objected, arguing that "at this point there is no evidence of gang activity" and that "[i]t is an improper comment of association with this individual being in any gang." The trial court overruled the objection. On the second occasion, the State called as a witness Detective C.N. Delaney, who testified that she had taken a statement from Boone and that Boone had admitted to being a member of the "700 Group" or the "700 Click." Det. Delaney testified that, based on her knowledge and experience, the "700 Crew"<sup>3</sup> had originally been formed as a music group and that she associated the group with gang activity. Defense counsel objected, arguing that Det. Delaney's reference to "gang" was extremely prejudicial. The trial court overruled the objection.

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<sup>3</sup>The terms "700 Group," "700 Click," and "700 Crew" apparently refer to the same loosely defined group of individuals. The "700" is derived from the block number in a west Montgomery neighborhood. Boone admits that he is affiliated with the group, but he objects to the characterization of the group as a "gang." Other than Det. Delaney's unsupported opinion, the State's brief does not point to any evidence indicating that the 700 Group was, in fact, a "gang."

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The Court of Criminal Appeals affirmed Boone's conviction, holding that the evidence of gang membership was relevant under Rule 404(b) to prove motive.

## II. Standard of Review

"The question of admissibility of evidence is generally left to the discretion of the trial court, and the trial court's determination on that question will not be reversed except upon a clear showing of abuse of discretion." Ex parte Loggins, 771 So. 2d 1093, 1103 (Ala. 2000).

## III. Analysis

Boone asserts that the decision of the Court of Criminal Appeals conflicts with Thomas v. State, 625 So. 2d 1149 (Ala. Crim. App. 1992), rev'd on other grounds, Ex parte Thomas, 625 So. 2d 1156 (Ala. 1993), and R.D.H. v. State, 775 So. 2d 248 (Ala. Crim. App. 1997), and he contends that evidence of his membership in an alleged "gang" was irrelevant because, he says, there was no evidence indicating that Cooley was in any rival gang and no evidence indicating that the shooting was gang-related. We agree.

In R.D.H., the Court of Criminal Appeals stated that "evidence of a defendant's association with a 'gang[]" may

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properly be considered to be evidence of collateral bad acts." 775 So. 2d at 252. It held, therefore, that such evidence was inadmissible under the principles now incorporated in Rule 404(b), unless it is admissible for some purpose other than showing the defendant's bad character and action in conformity therewith (e.g., as in this case, to show motive).<sup>4</sup>

In Ex parte Thomas, this Court held that a trial court erred in refusing to grant a motion for a mistrial where the State had presented evidence indicating that the defendant was a member in a gang. The defendant contended that "the testimony concerning his membership in a gang was irrelevant and so highly prejudicial as to require the trial court to grant his motion for a mistrial." Ex parte Thomas, 625 So. 2d at 1157. This Court quoted with approval the following passage from the Court of Criminal Appeals' opinion:

"'We equate the association of the defendant with a "gang" as evidence of a collateral criminal act that is presumptively prejudicial and that is admissible

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<sup>4</sup>In R.D.H., this Court stated that evidence of the defendant's membership in the Ku Klux Klan, "an organization 'which espouses white supremacy and racial hatred,'" 775 So. 2d at 252, was arguably relevant to the issue of the credibility of a witness. Nonetheless, the Court held that this evidence should have been excluded because its probative value was substantially outweighed by the danger of unfair prejudice.

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only when probative and under certain limited exceptions.'" "

Id. (quoting Thomas v. State, 625 So. 2d at 1153). This Court went on to conclude that the evidence was prejudicial and that a mistrial was warranted.

In this case, Boone contends (1) that evidence of his alleged gang affiliation was presumptively prejudicial, (2) that the evidence was not relevant to motive, and (3) that, even if it was relevant, the evidence was due to be excluded because its probative value was substantially outweighed by the prejudicial effect.

The Court of Criminal Appeals stated the correct principles of law, but it erred in concluding that Boone's alleged gang affiliation was relevant to his motive for shooting Cooley. Specifically, the Court of Criminal Appeals did not identify any link between Boone's alleged affiliation with a gang and the asserted motive for the shooting. The Court of Criminal Appeals stated in its unpublished memorandum:

"Here, Boone admitted to police and testified at trial that he is a member of the '700 Group.' The record established that this group is associated with gang activity. The record also established that Boone and Cooley, the victim, lived a street

over from one another in the same neighborhood and that they had been involved in selling drugs. The record further established that members of Cooley's family participated in controlled drug buys with Boone and his associates and that, as a result, the police executed a search warrant of Boone's house. It was the State's theory of the case that such activity caused animosity between Boone and Cooley and ultimately led to the shooting. Thus, we conclude that the evidence was relevant to show Boone's motive for shooting Cooley ...."

The foregoing quote does not indicate that gang affiliation was relevant to Boone's motive for shooting Cooley. The record does not disclose any evidence indicating that Cooley or anyone in his family was a member of a gang. The motive advanced by the State at trial was that there was animosity between Boone and his friends, on the one hand, and Cooley's family, on the other hand, arising from the participation of Cooley's mother in police drug investigations that led to the arrest of Boone's friends.<sup>5</sup> The State does not explain how the evidence of "gang" affiliation is relevant to Boone's motive for shooting Cooley. It appears that the asserted animosity arose out of a personal dispute between

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<sup>5</sup>There is evidence in the record indicating that Cooley's mother was charged with drug offenses and sought to reduce her punishment by participating in controlled drug buys from some of Boone's friends, leading to the arrest of those friends. Various witnesses at trial referred to Cooley's family "snitching on" Boone's friends.



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Boone and Cooley's family, not out of a gang affiliation or a gang dispute.

#### IV. Conclusion

Based on the foregoing, we reverse the decision of the Court of Criminal Appeals and remand the case to that court for further proceedings.

REVERSED AND REMANDED.

Parker, J., concurs.

Stuart, Shaw, and Main, JJ., concur specially.

Bolin, Wise, and Bryan, JJ., dissent.

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SHAW, Justice (concurring specially).

I concur in the main opinion. I write specially to note the following.

The evidence tends to show that the defendant, Jacques Maurice Boone, and two of his longtime friends, Richard Freeman and an individual named "Geronimo," were members of a group called "the 700," the "700 Group," the "700 Click," or the "700 Crew." The 700 Crew is largely described in the record as a musical group whose members reside on the 700 block of Early Street in west Montgomery. The State's witness, Det. C.N. Delaney of the Montgomery Police Department, testified that it was "some kind of gang." At trial, she indicated:

"The 700 Crew, from just my knowledge as an officer from patrolling that area, from things and activity that I have seen them being involved in, it originally started as a music group. [Freeman], he raps, whatever the case may be. But then when you start feuding with another music group, now you are involved in gang activity. So that's why I associate them as a gang."

Det. Delaney could not state whether every member of the 700 Crew was "a gangster." Other than Det. Delaney's testimony that the 700 Crew was "feuding" with "another music group,"

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there is no evidence in the record indicating that the group was involved in any potential criminal activity.

Testimony at trial also indicated that Boone and Freeman sold drugs. The evidence shows that, at some point, certain members of the victim's family participated with law enforcement to sell or purchase drugs in "controlled buys." It appears that charges were brought against Freeman as a result of the victim's family's participation with law enforcement in these controlled buys. It is undisputed that the result was animosity between Freeman and members of the victim's family. The victim, Alondre Cooley, testified that, before this incident, there had been no problems between him and Boone and Freeman.

On appeal in the Court of Criminal Appeals, Boone argued:

"[A] prosecution witness who had interrogated Boone related a statement that Boone had made indicating that he was associated with a click [sic] which the witness suggested was a gang.

"The suggestion that Boone was in a gang was not relevant and, thus, improper and inadmissible under Ala. R. Evid. 402. And, even if evidence suggesting that Boone was in a gang had been relevant -- and was not -- it was ... due to be excluded under Ala. R. Evid. 403."

As the Court of Criminal Appeals has held:

""[I]n its modern usage, without qualification, [the word "gang"] denotes -- in common intent and understanding -- criminal action.' Lanzetta v. New Jersey, 306 U.S. 451, 456, 59 S. Ct. 618, 620, 83 L. Ed. 888 (1939). We equate the association of a defendant with a 'gang' as evidence of a collateral criminal act that is presumptively prejudicial and that is admissible only when probative and under certain limited exceptions. See Bolden v. State, 595 So. 2d 911 (Ala. Cr. App. 1991), cert. denied, 595 So. 2d 914 (Ala. 1992). See Ex parte Dill, 600 So. 2d 372, 373 (Ala. 1992) ('gratuitous references, even indirect ones, to past criminal activity have required the reversal of criminal convictions'). See also H. Schwab, 'Of Gangs and Guilt,' 3 Los Angeles Lawyer 13 (1990) (evidence of organizational membership as proof of crime). '[E]ven if the proffered evidence [of prior bad acts] fits within an exception to the general exclusionary rule, its probative value must outweigh its prejudicial effect for the evidence to be admissible.' Ex parte Smith, 581 So. 2d 531, 535 (Ala. 1991)."

Thomas v. State, 625 So. 2d 1149, 1153 (Ala. Crim. App. 1992), rev'd on other grounds, Ex parte Thomas, 625 So. 2d 1156, 1156 (Ala. 1993).

In analyzing this issue in its unpublished memorandum affirming Boone's conviction, the Court of Criminal Appeals discussed its prior decision in Griffin v. State, 790 So. 2d 267 (Ala. Crim. App. 1999), rev'd on other grounds, 790 So. 2d 351 (Ala. 2000):

""Griffin relies on Ex parte Thomas, 625 So. 2d 1156 (Ala. 1993), in which the Alabama Supreme Court stated that allowing

the state to comment on any possible gang affiliation is equal to allowing the state to introduce evidence of collateral criminal acts.

"Rule 404(b), Ala. R. Evid., states, in pertinent part:

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive...."

"(Emphasis added.) This Court has previously held that a defendant's involvement in gang activity may be relevant to prove motive in a particular case. Siler v. State, 705 So. 2d 552 (Ala. Crim. App. 1997); see also Knotts v. State, 686 So. 2d 431, 469 (Ala. Crim. App. 1995), aff'd, 686 So. 2d 486 (Ala. 1996), cert. denied, 520 U.S. 1199, 117 S. Ct. 1559, 137 L. Ed. 2d 706 (1997) (holding that "the appellant's possible membership in an organization that espouses racial hatred is relevant to a possible motive for the homicide").

"....

"Moreover, Rule 403, Ala. R. Evid., states:

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the

issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

"'....

"'In R.D.H. v. State, 775 So. 2d 248, 252-53 (Ala. Crim. App. 1997), we stated:

""'Evidence of any offense other than that specifically charged is p r i m a f a c i e inadmissible. Nicks v. State, 521 So. 2d 1018 (Ala. Crim. App. 1987), aff'd, 521 So. 2d 1035 (Ala.), cert. denied, 487 U.S. 1241, 108 S. Ct. 2916, 101 L. Ed. 2d 948 (1988). However, evidence of collateral crimes or bad acts is admissible as part of the prosecutor's case if the defendant's collateral misconduct is relevant to show his guilt other than by suggesting that he is more likely to be guilty of the charged offense because of his past misdeeds. Nicks v. State; Brewer v. State, 440 So. 2d 1155 (Ala. Crim. App. 1983).

""'....'

""... All of the exceptions relate to the relevancy of the evidence, which means that evidence of separate and distinct crimes is admissible only when the evidence is relevant to the crime charged. Mason v. State, 259 Ala. 438, 66 So. 2d 557 (1953); Nicks v. State. If the evidence is not so remote as to lose its relevancy, the decision to allow or to not allow evidence of collateral crimes or acts as part of the state's case rests in the sound discretion of the trial court. McGhee v. State, 333 So. 2d 865 (Ala. Crim. App. 1976).

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""That being said, we are, however, also mindful of the well-settled principle that even where the proffered evidence of collateral bad acts is relevant, its probative value must not be substantially outweighed by the danger of undue and unfair prejudice for the evidence to be admissible. ... Before the probative value of evidence of collateral bad acts may be held to outweigh its potential prejudicial effect, the evidence must be 'reasonably necessary' to the state's case. Bush [v. State], 695 So. 2d 70] at 85 [(Ala. Crim. App. 1995), aff'd, 695 So. 2d 138 (Ala. 1997)]; Averette [v. State], 469 So. 2d [1371] at 1374 [(Ala. Crim. App. 1985)]."

"'.....'

"Griffin, 790 So. 2d at 297-99."

Evidence indicating that Boone was a member of a gang is inadmissible under Rule 404(b), Ala. R. Evid. However, it can be relevant, as the State argues here, to prove his motive in shooting Cooley. Such evidence is admissible only when it is relevant to the crime charged and is not so remote as to lose its relevancy. Further, even where it is relevant, its probative value must not be substantially outweighed by the danger of undue and unfair prejudice. In order for the probative value of the evidence to outweigh its potential prejudicial effect, it must be "reasonably necessary" to the State's case.

After reviewing the record, I cannot find any evidence of a connection between the 700 Crew and the shooting of Cooley. Although Boone, Freeman, and "Geronimo" were all members of the group, the impetus for the attack -- Cooley's family's cooperation with the police -- was not connected to the group. Specifically, there is no evidence indicating that the 700 Crew engaged in drug sales, and there is no evidence indicating that the Cooley family's cooperation impacted the



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700 Crew as a gang. As the main opinion notes: "It appears that the asserted animosity arose out of a personal dispute between Boone and Cooley's family, not out of a gang affiliation or a gang dispute." \_\_\_ So. 3d at \_\_\_. Simply put, there is no evidence indicating that Boone was motivated to retaliate against the Cooleys on behalf of the group.<sup>6</sup> Because of this, there is insufficient evidence to show that Boone's membership in the 700 Crew was "relevant to the crime charged." Further, even if it were relevant, this "presumptively prejudicial" evidence was not "reasonably necessary" to the State's case so that the probative value substantially outweighed the danger of undue and unfair prejudice.

The State contends that the evidence was also "necessary for a full and complete (whole picture) explanation of the underlying motives that precipitated" the shooting. I take this as an argument that the evidence was part of the res gestae, which can be a permissible exception under Rule

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<sup>6</sup>There is some testimony by Boone that he was framed for the shooting because, he said, the Cooley family was attempting to get "the rest" of the 700 Crew, but this testimony does not support the motive theory set forth by the State.

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404(b). See Doster v. State, 72 So. 3d 50, 87-89 (Ala. Crim. App. 2010). Again, however, there is no evidence tending to show that Boone's membership in the 700 Crew, as a gang, explains what occurred in this case. Further, there is nothing suggesting that the evidence was reasonably necessary to the State's case.

Finally, I note that the circumstances surrounding the shooting were contested and that the identity of the shooter was disputed. Given that certain credibility determinations were for the jury, I cannot conclude that the admission of the evidence indicating that Boone was a member of a gang could be harmless error. See Wiggins v. State, 193 So. 3d 765, 795 (Ala. Crim. App. 2014) ("The harmless-error rule applies to the admission of Rule 404(b), Ala. R. Evid., evidence.").

Stuart and Main, JJ., concur.