TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00540-CR

Larry Donnell Boswell, Jr., Appellant

v.

The State of Texas, Appellee

FROM THE DISTRICT COURT OF BELL COUNTY, 27TH JUDICIAL DISTRICT
NO. 72804, HONORABLE JOHN GAUNTT, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

A jury convicted appellant Larry Donnell Boswell, Jr., of the offense of capital murder.[1] The district court rendered judgment on the verdict and assessed punishment at life imprisonment without the possibility of parole. In three issues on appeal, Boswell asserts that the district court abused its discretion in admitting evidence of Boswell's gang affiliation and in denying his motion for new trial. We will affirm the judgment of conviction.

BACKGROUND

The jury heard evidence that on the night of July 16, 2012, Ricky Brandon was killed during an armed robbery at a residence in Killeen. The evidence tended to show that Brandon had participated in the robbery and that at some point while the robbery was ongoing, Brandon was shot

[1] *See* Tex. Penal Code § 19.03(a)(2).

in the chest by one of his accomplices and was abandoned outside the residence as the other perpetrators escaped. Brandon's body was subsequently found by police.

According to the evidence presented, Boswell, the leader of a street gang known as the Gangster Disciples, had ordered several members of the gang to commit the robbery. This evidence included the testimony of gang members Daniel "D.C." Carruth, who testified that he had participated in the robbery as ordered by Boswell; Paul Sterling, who testified that he had been asked by Boswell to participate in the robbery but refused to do so; and John Bowman, a former officer with the Killeen Police Department who had extensive experience investigating gang-related crimes and who provided detailed testimony connecting Boswell to the Gangster Disciples. Based on this and other evidence, which we discuss in more detail below, Boswell was charged as a party to the robbery that resulted in Brandon's death. The jury found Boswell guilty of capital murder as charged and the district court rendered judgment on the verdict, sentencing Boswell to life imprisonment without the possibility of parole as mandated by statute.[2] Boswell subsequently filed a motion for new trial, which the district court denied following a hearing. This appeal followed.

ANALYSIS

Admissibility of gang-related evidence

In his first issue, Boswell asserts that the district court abused its discretion in admitting evidence of Boswell's affiliation with the Gangster Disciples. Specifically, Boswell

[2] *See id*. § 12.31(a)(2).

claims that his gang affiliation was inadmissible character evidence not relevant to any issue in the case or, in the alternative, was more prejudicial than probative.[3]

We review a district court's evidentiary rulings for abuse of discretion.[4] We are to view the record "in the light most favorable to the trial court's determination, and the judgment will be reversed only if it is arbitrary, unreasonable, or 'outside the zone of reasonable disagreement.'"[5] "We will sustain the lower court's ruling if it is reasonably supported by the record and is correct on any theory of law applicable to the case."[6]

"Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."[7] "Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character."[8] However, such evidence "may be admissible for another purpose, such as proving motive, opportunity, intent,

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[3] *See* Tex. R. Evid. 401, 403, 404(b).

[4] *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014) (citing *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006)); *Tillman v. State*, 354 S.W.3d 425, 435 (Tex. Crim. App. 2011).

[5] *Story*, 445 S.W.3d at 732 (quoting *Dixon*, 206 S.W.3d at 590); *see Montgomery v. State*, 810 S.W.2d 372, 391-92 (Tex. Crim. App. 1991) (op. on reh'g).

[6] *Dixon*, 206 S.W.3d at 590 (citing *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990)); *see Valtierra v. State*, 310 S.W.3d 442, 448 (Tex. Crim. App. 2010).

[7] Tex. R. Evid. 401.

[8] Tex. R. Evid. 404(b)(1).

preparation, plan, knowledge, identity, absence of mistake, or lack of accident."[9] "The exceptions listed under Rule 404(b) are neither mutually exclusive nor collectively exhaustive."[10] "Rule 404(b) is a rule of inclusion rather than exclusion—it excludes only evidence that is offered solely for proving bad character and conduct in conformity with that bad character."[11]

Similarly, Rule 403 allows for the exclusion of evidence only if its probative value is "substantially outweighed" by the danger of "unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence."[12] "Accordingly, 'the plain language of Rule 403 does not allow a trial court to exclude otherwise relevant evidence when that evidence is merely prejudicial. Indeed, all evidence against a defendant is, by its very nature, designed to be prejudicial.'"[13] Rather, "[t]he rule envisions exclusion of evidence only when there is a 'clear disparity between the degree of prejudice of the offered evidence and its probative value.'"[14] In determining whether such a disparity exists, "a trial court, when undertaking a Rule 403

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[9] Tex. R. Evid. 404(b)(2).

[10] *De La Paz v. State*, 279 S.W.3d 336, 342 (Tex. Crim. App. 2009) (citing *Pondexter v. State*, 942 S.W.2d 577, 583-84 (Tex. Crim. App. 1996); *Montgomery*, 810 S.W.2d at 387; *Banda v. State*, 768 S.W.2d 294, 296 (Tex. Crim. App. 1989)); *see also Bass v. State*, 270 S.W.3d 557, 563 (Tex. Crim. App. 2008) (explaining that extraneous-offense evidence is admissible to rebut defensive theories).

[11] *Dabney v. State*, 492 S.W.3d 309, 317 (Tex. Crim. App. 2016) (citing *De La Paz*, 279 S.W.3d at 343).

[12] Tex. R. Evid. 403.

[13] *Robisheaux v. State*, 483 S.W.3d 205, 217-18 (Tex. App.—Austin 2016, pet. ref'd) (quoting *Pawlak v. State*, 420 S.W.3d 807, 811 (Tex. Crim. App. 2013) (internal citation omitted)).

[14] *Hammer v. State*, 296 S.W.3d 555, 568 (Tex. Crim. App. 2009) (quoting *Conner v. State*, 67 S.W.3d 192, 202 (Tex. Crim. App. 2001); *Joiner v. State*, 825 S.W.2d 701, 708 (Tex. Crim. App.

analysis, must balance (1) the inherent probative force of the proffered item of evidence along with (2) the proponent's need for that evidence against (3) any tendency of the evidence to suggest decision on an improper basis, (4) any tendency of the evidence to confuse or distract the jury from the main issues, (5) any tendency of the evidence to be given undue weight by a jury that has not been equipped to evaluate the probative force of the evidence, and (6) the likelihood that presentation of the evidence will consume an inordinate amount of time or merely repeat evidence already admitted."[15] "[T]hese factors may well blend together in practice."[16]

We first address Boswell's claim that the gang-affiliation evidence was not relevant. "Gang-membership evidence is admissible under Rule 404(b) . . . if it is relevant to show a non-character purpose that in turn tends to show the commission of the crime."[17] For example, it is well established that "gang affiliation is relevant to show a motive for a gang-related crime."[18]

1992)).

[15] *Gigliobianco v. State*, 210 S.W.3d 637, 641-42 (Tex. Crim. App. 2006).

[16] *Id*. at 642.

[17] *Ortiz v. State*, 93 S.W.3d 79, 94 (Tex. Crim. App. 2002); *Tibbs v. State*, 125 S.W.3d 84, 89 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd).

[18] *Vasquez v. State*, 67 S.W.3d 229, 239-40 (Tex. Crim. App. 2002); *Bradford v. State*, 178 S.W.3d 875, 879 (Tex. App.—Fort Worth 2005, pet. ref'd); *see also Medina v. State*, 7 S.W.3d 633, 643-44 (Tex. Crim. App. 1999) (holding that gang-related evidence was admissible to explain context in which offense occurred and had some tendency to show defendant's motive for committing offense); *Sanchez v. State*, 444 S.W.3d 215, 221-22 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd) (gang-affiliation evidence admissible to rebut defensive theory and to establish possible motive for committing offense); *McCallum v. State*, 311 S.W.3d 9, 15 (Tex. App.—San Antonio 2010, no pet.) (evidence of gang membership "went to the heart of the case" and was admissible to show motive); *Williams v. State*, 974 S.W.2d 324, 331 (Tex. App.—San Antonio 1998, pet. ref'd) (evidence of gang affiliation admissible to show motive to commit robbery).

Additionally, "it has long been the rule in this State that the jury is entitled to know all the relevant surrounding facts and circumstances of the charged offense; an offense is not tried in a vacuum."[19] Thus, in some cases, extraneous-offense evidence may be admissible as "same-transaction contextual evidence," the purpose of which is to "place the instant offense in context."[20] "Same-transaction contextual evidence is admissible as an exception under Rule 404(b) where such evidence is necessary to the jury's understanding of the instant offense."[21] "But, under Rule 404(b), same-transaction contextual evidence is admissible only when the offense would make little or no sense without also bringing in that evidence, and it is admissible 'only to the extent that it is necessary to the jury's understanding of the offense.'"[22]

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[19] *Moreno v. State*, 721 S.W.2d 295, 301 (Tex. Crim. App. 1986) (citing *Archer v. State*, 607 S.W.2d 539 (Tex. Crim. App. 1980)); *Morales v. State*, 389 S.W.3d 915, 919 (Tex. App.—Houston [14th Dist.] 2013, no pet.).

[20] *Nguyen v. State*, 177 S.W.3d 659, 667 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd).

[21] *Rogers v. State*, 853 S.W.2d 29, 33 (Tex. Crim. App. 1993).

[22] *Devoe v. State*, 354 S.W.3d 457, 469 (Tex. Crim. App. 2011) (quoting *Wyatt v. State*, 23 S.W.3d 18, 25 (Tex. Crim. App. 2000)); *see also Medellin v. State*, 960 S.W.2d 904, 908-09 (Tex. App.—Amarillo 1997, no pet.) (holding that gang-related evidence was admissible either as same-transaction contextual evidence or to explain other same-transaction contextual evidence; observing that "the admission of 'background' gang affiliation evidence is not a problem for appellate courts unless it appears to have been admitted in an effort to subvert Rule 404(b) limitations on the admission of character evidence"); *Stern v. State*, 922 S.W.2d 282, 286 (Tex. App.—Fort Worth 1996, pet. ref'd) (holding that gang-related evidence was admissible to show motive and also provided "proper contextual or background evidence in [the] case"). *But see Pondexter*, 942 S.W.2d at 583-84 (concluding that evidence of defendant's gang affiliations and activities was not admissible as same-transaction contextual evidence because "the prosecution could have presented a clear and understandable case explaining how appellant planned to rob and murder the decedent, without interjecting the unnecessary information about the gangs"); *Macias v. State*, 959 S.W.2d 332, 339 (Tex. App.—Houston [14th Dist.] 1997, pet. ref'd) (holding that gang-related evidence was inadmissible as same-transaction contextual evidence because, "[u]nder the facts of this case, appellant's gang membership was an incidental aspect of appellant's life. Appellant's gang

In this case, Boswell was charged under the law of parties, and the district court would not have abused its discretion in finding that in order to prove Boswell's status as a party to the offense, the State needed to present evidence connecting Boswell to the individuals who had committed the robbery. It would not have been outside the zone of reasonable disagreement for the district court to conclude that evidence tending to show that Boswell was the leader of the same gang to which those individuals belonged had at least some tendency to connect Boswell to the offense and thus would be relevant for that reason. Moreover, because Sterling and Carruth provided detailed testimony explaining how the robbery was a gang-related crime, the district court would not have abused its discretion in finding that Boswell's affiliation with the gang that had committed the robbery had at least some tendency to establish: (1) Boswell's motive and intent to commit the offense; (2) Boswell's identity as the person who had ordered the robbery; (3) Boswell's preparation and planning of the robbery; and (4) Boswell's knowledge of the circumstances surrounding the events that occurred before, during, and after the offense, including Brandon's death. As the State explained at the hearing on the admissibility of the gang-related evidence, Boswell's gang affiliation was "part of that plan, part of his preparation, and part of what made him a party to this offense, and in that the evidence will show that he ordered this to take place. . . . In fact, one of the State's first witnesses of this case is a member of the Gangster Disciples. That's how he knows the defendant so identity comes into play as well." The district court would not have abused its discretion in

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affiliation was not part of the reason for the murder or part of the explanation for why the murder occurred as it did").

concluding that the gang-related evidence was admissible for these and other non-character conformity purposes pursuant to Rule 404(b).

Nor would the district court have abused its discretion in finding that Boswell's gang affiliation was admissible as same-transaction contextual evidence. It would not be outside the zone of reasonable disagreement for the district court to conclude that this was a case in which the gang affiliation of Boswell and his associates was an essential aspect of the offense. The State's key witnesses, Daniel Carruth and Paul Sterling, were both members of the gang that had committed the robbery, and, according to their testimony, they had both been ordered by Boswell, who they claimed was the leader of that gang, to participate in the robbery along with other gang members, one of whom was killed during the commission of the offense. Also, Carruth had agreed to participate in the robbery but Sterling had refused, which, the district court could have further found, would make it necessary for the jury to understand the reasons for the witnesses' respective decisions so as to better assess the credibility of their testimony. It would not be outside the zone of reasonable disagreement for the district court to have concluded that the jury would not be able understand these and other circumstances surrounding the offense without the presentation of gang-related evidence that "placed the instant offense in context" by explaining how the witnesses, the victim, the defendant, and other participants in the robbery were connected to each other.

We also cannot conclude on this record that the district court abused its discretion in finding that the gang-related evidence was not more prejudicial than probative. Because this was a gang-related crime with witnesses who were gang members and a defendant who was being charged as a party to the offense, it would not have been outside the zone of reasonable disagreement

for the district court to have found that the State's need for evidence connecting the defendant to that gang was strong and that the gang-related evidence was highly probative of several critical issues in the case, including motive, intent, identity, preparation, planning, and knowledge. And, because this was a gang-related crime, it would not be outside the zone of reasonable disagreement for the district court to have further found have that whatever prejudicial effect the gang-affiliation evidence might have on Boswell's defense would not "substantially outweigh" the probative force of that evidence.[23] On this record, we cannot conclude that the district court abused its discretion in admitting evidence of Boswell's gang affiliation.

We overrule Boswell's first issue.

Failure to disclose evidence

In his second and third issues, Boswell asserts that he was entitled to a new trial based on the State's failure to disclose the disciplinary history of John Bowman, the former Killeen police officer who had provided testimony connecting Boswell to the Gangster Disciples. At the hearing on Boswell's motion for new trial, Boswell presented evidence showing that in January 2014, approximately 17 months prior to Boswell's trial, Bowman had received a 56-day disciplinary suspension without pay, after which Bowman had retired from the department. Bowman testified that his suspension was based on violations of the department's tactical response policies during a police stand-off with an armed suspect. Specifically, according to the evidence presented, Bowman had remained at the scene of the stand-off when he should have instead been at the staging area, gave

[23] *See Vasquez*, 67 S.W.3d at 240.

orders to members of the SWAT team stationed at the scene, although he was not authorized to do so, and failed to follow various officer-safety protocols. The stand-off, which resulted in the death of another officer, had occurred in July 2013, approximately one year after the robbery had been committed. Bowman acknowledged in his testimony that he had failed to disclose this information to either defense counsel or the prosecutors prior to trial. After considering this evidence and hearing argument from counsel, the district court denied Boswell's motion for new trial.

"We review a trial judge's denial of a motion for new trial under an abuse-of-discretion standard."[24] "'We do not substitute our judgment for that of the trial court; rather, we decide whether the trial court's decision was arbitrary or unreasonable.'"[25] "We view the evidence in the light most favorable to the trial judge's ruling and presume that all reasonable factual findings that could have been made against the losing party were made against that losing party."[26] "A trial court abuses its discretion in denying a motion for new trial only when no reasonable view of the record could support the trial court's ruling."[27]

In *Brady v. Maryland*, the United States Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the

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[24] *Colyer v. State*, 428 S.W.3d 117, 122 (Tex. Crim. App. 2014) (citing *Salazar v. State*, 38 S.W.3d 141, 148 (Tex. Crim. App. 2001)); *see Hall v. State*, 283 S.W.3d 137, 165 (Tex. App.—Austin 2009, pet. ref'd).

[25] *Colyer*, 428 S.W.3d at 122 (quoting *Holden v. State*, 201 S.W.3d 761, 763 (Tex. Crim. App. 2006)).

[26] *Id*. (citing *Quinn v. State*, 958 S.W.2d 395, 402 (Tex. Crim. App. 1997)).

[27] *Holden*, 201 S.W.3d at 763.

prosecution."[28] Thus, to be entitled to a new trial on the basis of a *Brady* violation, "a defendant must show that (1) the State failed to disclose evidence, regardless of the prosecution's good or bad faith; (2) the withheld evidence is favorable to him; [and] (3) the evidence is material, that is, there is a reasonable probability that had the evidence been disclosed, the outcome of the trial would have been different."[29] Additionally, "the evidence central to the *Brady* claim" must be admissible in court.[30] "A prosecutor does not have a duty to turn over evidence that would be inadmissible at trial."[31]

Here, it is undisputed that the first two *Brady* requirements are satisfied: For purposes of *Brady*, the State's duty to disclose includes "any favorable evidence known to [] others acting on the government's behalf in the case, including the police,"[32] and it is well established that evidence that can be used to impeach the credibility of a State's witness is "favorable to the accused" and "falls within the *Brady* rule."[33] Thus, whether the State's failure to disclose Bowman's disciplinary history entitled Boswell to a new trial turns on whether that evidence was admissible and material.

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[28] 373 U.S. 83, 87 (1963).

[29] *Pena v. State*, 353 S.W.3d 797, 809 (Tex. Crim. App. 2011) (citing *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002)).

[30] *Id*. (citing *Ex parte Kimes*, 872 S.W.2d 700, 703 (Tex. Crim. App. 1993)).

[31] *Kimes*, 872 S.W.2d at 703 (citing *Iness v. State*, 606 S.W.2d 306, 310 (Tex. Crim. App. 1980)).

[32] *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

[33] *United States v. Bagley*, 473 U.S. 667, 676 (1985) (citing *Giglio v. United States*, 405 U.S. 150, 154 (1972)).

We first observe that, pursuant to Texas Rule of Evidence 608(b), "[e]xcept for a criminal conviction under Rule 609, a party may not inquire into or offer extrinsic evidence to prove specific instances of the witness's conduct in order to attack or support the witness's character for truthfulness."[34] Relying on this rule, Texas courts have repeatedly held that the State does not violate *Brady* by failing to disclose a witness's prior bad acts.[35] Following this precedent, the district court would not have abused its discretion in concluding that Bowman's disciplinary history was inadmissible to attack Bowman's character for truthfulness.[36]

To the extent the evidence might have been admissible for some other purpose, such as to show Bowman's bias or interest in testifying for the State,[37] we nevertheless cannot conclude

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[34] Tex. R. Evid. 608(b).

[35] *See, e.g.*, *Lagrone v. State*, 942 S.W.2d 602, 615 (Tex. Crim. App. 1997) (holding that prosecution had no duty to disclose witness's prior drug use because evidence would be inadmissible pursuant to Rule 608(b)); *Kimes*, 872 S.W.2d at 703 (prosecution had no duty to disclose inadmissible evidence tending to implicate State's witness in criminal offenses); *Baldez v. State*, 386 S.W.3d 324, 328 (Tex. App.—San Antonio 2012, no pet.) (holding that prosecution had no duty to turn over report of officer's disciplinary suspension because it would have been inadmissible at trial); *Dalbosco v. State*, 978 S.W.2d 236, 238-39 (Tex. App.—Texarkana 1998, pet. ref'd) (prosecution had no duty to disclose arresting officer's disciplinary history, including his dismissal for reasons that included lying, because it would have been inadmissible at trial); *see also Liguez v. State*, No. 14-98-01132-CR, 2000 Tex. App. LEXIS 1884, at *4-5 (Tex. App.—Houston [14th Dist.] Mar. 23, 2000, no pet.) (mem. op., not designated for publication) (prosecution had no duty to disclose officer's previous reprimand in another case); *Maldonado v. State*, No. 14-96-01173-CR, 1998 Tex. App. LEXIS 7482, at *5-6 (Tex. App.—Houston [14th Dist.] Dec. 3, 1998, pet. ref'd) (mem. op., not designated for publication) (State did not violate *Brady* by failing to disclose internal-affairs investigation of testifying officer; evidence would have been inadmissible pursuant to Rule 608(b)).

[36] *See* Tex. R. Evid. 608(b).

[37] *See* Tex. R. Evid. 613(b). This was Boswell's theory of admissibility at the new-trial hearing. He argued that Bowman had an interest in testifying for the State in order to "pad" his resume and increase the likelihood that he could obtain another state-law-enforcement job in the future.

on this record that the district court would have abused its discretion in finding that the evidence was not material. To prove that non-disclosed evidence is material, "the defendant must show that, 'in light of all the evidence, it is reasonably probable that the outcome of the trial would have been different had the prosecutor made a timely disclosure.'"[38] Thus, [w]hen evaluating whether the materiality standard is satisfied, the strength of the exculpatory evidence is balanced against the evidence supporting conviction."[39] However, "[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence."[40] In other words, "it is not a sufficiency of evidence test. A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict."[41] Rather, the defendant must show "that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict."[42]

Here, the district court would not have abused its discretion in finding that the non-disclosed evidence tended to show, at most, that Bowman had violated the department's tactical response policies in a separate incident unrelated to Boswell's case that had occurred approximately

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[38] *Pena*, 353 S.W.3d at 812 (quoting *Hampton*, 86 S.W.3d at 612).

[39] *Id*.

[40] *Kyles*, 514 U.S. at 434.

[41] *Id*. at 434-35.

[42] *Id*. at 435.

one year after the robbery. It would not have been outside the zone of reasonable disagreement for the district court to conclude that such evidence would not have "put the whole case in such a different light as to undermine confidence in the verdict," particularly when considering the nature of Bowman's testimony at trial. Bowman provided limited testimony concerning the offense itself.[43] Instead, Bowman testified primarily as an expert in street gangs, and he provided detailed testimony connecting Boswell to the Gangster Disciples. But Boswell failed to present any evidence tending to show that the incident that led to Bowman's suspension involved either gang violence or the Gangster Disciples so as to suggest any bias on the part of Bowman to testify against Boswell. Moreover, the record reflects that evidence connecting Boswell to the Gangster Disciples was not limited to Bowman's testimony. Both Daniel Carruth and Paul Sterling identified Boswell as the leader of the Gangster Disciples, as did a defense witness, Timothy Skobel, another gang member.[44] Thus, the district court would not have abused its discretion in finding that the undisclosed evidence of Bowman's disciplinary history, to the extent it would have been admissible and had some tendency to undermine Bowman's credibility, would not have undermined the credibility of these

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[43] Bowman testified that, "right after the body was found," he had identified the victim's tattoos as Gangster Disciple tattoos and that, "sometime later," he had assisted the lead investigator with interviewing witnesses.

[44] Boswell asserts that both Carruth and Sterling were accomplices to the crime and that, consequently, Bowman's testimony was critical corroboration evidence. However, the record supports a finding by the district court that Sterling, who testified that he had refused to participate in the robbery, was not an accomplice. *See Smith v. State*, 332 S.W.3d 425, 439 (Tex. Crim. App. 2011) ("An accomplice is a person who participates in the offense before, during, or after its commission with the requisite mental state. . . . A person is not an accomplice if the person knew about the offense and failed to disclose it or helped the accused conceal it."). Therefore, the district court would not have abused its discretion in finding that Sterling's testimony was sufficient to corroborate Carruth's testimony and that Bowman's testimony was thus not needed for that purpose.

other witnesses. And, although it is true that Bowman provided more extensive testimony than the other witnesses concerning the history of Boswell's involvement with the Gangster Disciples, it would not have been outside the zone of reasonable disagreement for the district court to conclude that the disclosure of Bowman's suspension—which was based on his failure to follow tactical response policies in a single, unrelated incident—would not have caused the jury to discredit Bowman's testimony connecting Boswell to the Gangster Disciples, which the record reflects was gleaned from Bowman's extensive experience, developed over many years prior to his suspension, in investigating gang-related crime in general and the Gangster Disciples in particular. For these reasons, we cannot conclude on this record that the district court abused its discretion in denying the motion for new trial on the ground that Boswell failed to prove that there was a "reasonable probability that the outcome of the trial would have been different had the prosecutor made a timely disclosure" of Bowman's disciplinary history.

We overrule Boswell's second and third issues.

CONCLUSION

We affirm the judgment of the district court.

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Bob Pemberton, Justice

Before Chief Justice Rose, Justices Pemberton and Bourland

Affirmed

Filed: July 7, 2017

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