

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYKEITH LEROY TURNER,

Defendant-Appellant.

UNPUBLISHED

September 12, 1997

No. 195947

Recorder's Court

LC No. 95-010246

Before: Markman, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316; MSA 28.548, assault with intent to murder, 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). A juvenile sentencing hearing was conducted, following which defendant was sentenced as an adult to concurrent terms of life imprisonment for the first-degree murder and assault with intent to murder convictions, to be served consecutive to a two-year term for his felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arose from a drive-by shooting incident that occurred on August 19, 1995. On that day, the decedent, Credell Hubbard, and the complainant, Lewis Harris, were playing cards on the porch of a residence located on the corner of Hilldale and Gable streets in Detroit. Several others gathered in and around the residence for a back-to-school party. At approximately 9:30 p.m., a beige truck rounded the corner in front of the house and dimmed its headlights. Defendant, Charles Knowles, and an individual known as Ron Ron were seated in the bed of the truck. Samuel Benning was seated in the front passenger seat, and Hanandis Lathan drove. Suddenly, one of the individuals in the back of the truck sat up and fired three shots. A medium caliber bullet, "possibly a .38," struck and killed the decedent, and a second bullet just missed the complainant.

At trial, the prosecution introduced evidence that defendant perpetrated the drive-by shooting en route from another criminal enterprise. Knowles' testimony from the preliminary examination,¹ along with Benning's trial testimony, established that, prior to the drive-by shooting, all five individuals, including defendant, agreed upon a plan to "rob someone." To effectuate their plan, all five men

climbed aboard the beige truck, then cruised up and down Seven Mile looking for someone to rob. As the truckload of individuals turned onto Gable to go home, Knowles, who had leaned forward into the cab of the truck, heard someone say, “Shoot,” followed by the sound of gunfire. When Knowles looked back, he saw defendant and Ron Ron holding guns. Benning, too, looked back when he heard the shooting. According to Benning, defendant was holding a .38 caliber revolver.

On appeal, defendant argues that the trial court erred in admitting evidence of the prior-in-time plan to rob as part of the *res gestae* of the charged offenses. We disagree. A trial court’s decision regarding the admission of evidence is reviewed for an abuse of discretion. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996); *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995).

Evidence of a prior bad act is admissible under the *res gestae* exception where the act is so blended or connected with the charged offense that proof of one incidentally involves the other or explains the circumstances of the crime. *People v Robinson*, 128 Mich App 338, 340; 340 NW2d 303 (1983). Stated somewhat differently, *res gestae* has been defined as “the facts which so illustrate and characterize the principal fact as to constitute the whole one transaction, and render the latter necessary to exhibit the former in its proper effect.” *Id.* Here, the prior-in-time plan to rob was connected with the shooting incident by the fact that both were part of the same criminal binge. On the night in question, defendant armed himself, then joined his friends in the back of a beige pickup truck and, together, they knowingly embarked upon a journey of wild abandon. The facets of that journey not only demonstrate the deliberateness of defendant’s conduct, but explain how defendant came to be at the corner of Gable and Hilldale on the evening of August 19, 1995, and why defendant was toting a .38 caliber revolver. Because defendant’s involvement in the plan to rob explains the circumstances of the shooting, we find no abuse of discretion in the trial court’s decision to admit the evidence pursuant to the *res gestae* exception.

Next, defendant argues that the trial court erred in admitting a letter, purportedly written by defendant to Benning, into evidence for want of proper authentication. We disagree. A trial court’s decision whether a letter has been properly authenticated for admission into evidence is reviewed for an abuse of discretion. *People v Martin*, 150 Mich App 630; 389 Mich App 713 (1986).

MRE 901 requires authentication of items by introduction of evidence sufficient to support a finding that the matter in question is what its proponent claims. *Martin, supra* at 637-638. There are several ways to satisfy the authentication requirement, including testimony of a witness with knowledge, a comparison by the trier of fact with handwriting specimens, and the distinctive characteristics contained in the letter itself. MRE 901(b). Here, Benning identified, though equivocally, the letter offered by the prosecution as being the letter written to him by defendant. Nevertheless, the testimony was sufficient to show that (1) the letter offered was the letter from defendant and (2) the letter was what the proponent claimed it to be and, therefore, we find no abuse of discretion.

Defendant also argues that the trial court erred in failing to give the requested accomplice instructions with regard to the testimony of Benning and Knowles. Upon request, a trial court

must issue a cautionary instruction on accomplice testimony. *People v McCoy*, 392 Mich 231; 220 NW2d 456 (1974). Likewise, if the issue is closely drawn, the same instruction must be given sua sponte. *Id.* Here, the record reveals that the trial court issued the requested instructions, but only with specific regard to Lathan's testimony. Nevertheless, we find that the instructions given, though somewhat imperfect, fairly presented the issues to be tried and sufficiently protected defendant's rights. *People v Perry*, 218 Mich App 520, 526; 554 NW2d 362 (1996). The instructions alerted the jurors to the potential dangers of accomplice testimony, instructed the jurors on how to recognize accomplice testimony, and instructed the jurors to exercise caution when examining such testimony. Accordingly, we find no error.

Lastly, defendant argues that the trial court erred in sentencing him as an adult. Specifically, defendant asserts that the trial court (1) failed to make sufficient findings regarding the factors set forth in MCL 769.1(3); MSA 28.1072(3), and (2) failed to properly consider and weigh the statutory factors. We disagree. The process by which this Court reviews a trial court's decision to sentence a minor as a juvenile or as an adult is a bifurcated one. *People v Launsbury*, 217 Mich App 358, 362; 551 NW2d 460 (1996). The trial court's factual findings supporting its determination regarding each statutory factor are reviewed under the clearly erroneous standard, and the ultimate decision whether to sentence the minor as a juvenile or as an adult is reviewed for an abuse of discretion. *Id.*

Here, the record reveals that the trial court sufficiently addressed each of the statutory criterion. In sum, the trial judge found that: (1) defendant's conduct was part of a repetitive pattern of self-aggrandizing behavior, (2) the killing was particularly horrific given the unsolicited and indiscriminate nature of the shooting, (3) because defendant perceived himself as "some kind of hero," he would prove disruptive to the rehabilitation of the other juveniles, (4) defendant showed no potential for rehabilitation, and (5) the interests of public welfare required sentencing as an adult. Because the judge's findings and ultimate decision to sentence defendant as an adult were supported by the testimonial record from the juvenile sentencing hearing, as well as the reports submitted by the prosecution's expert witnesses, we find no abuse of discretion.

Affirmed.

/s/ Stephen J. Markman

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald

¹ Knowles died prior to trial. Consequently, the trial court deemed Knowles an unavailable witness and permitted the prosecutor to read into evidence Knowles' testimony from the preliminary examination.