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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE TEJEDA,

Defendant and Appellant.

2d Crim. No. B256058  
(Super. Ct. No. BA389688-01)  
(Los Angeles County)

Jorge Tejada appeals a judgment after conviction by jury of second degree murder of Jesse Medina. (Pen. Code, §§ 187, subd. (a), 189.) The jury found true an allegation that Tejada personally used and discharged a handgun, causing death. (*Id.*, § 12022.53, subd. (d).) The jury found not true an allegation that the murder was willful, deliberate and premeditated.

Tejada contends his trial counsel rendered ineffective assistance when counsel (1) did not discover or present expert testimony that Tejada suffered from "developmental trauma disorder"; (2) did not offer evidence that Jesse's brother, David,<sup>1</sup> had a prior robbery conviction and was a member of the Evil Klan gang; and (3) did not object when Jesse was referred to as the "victim." Tejada also contends the trial court abused its discretion when it did not allow evidence that, after the homicide here, David

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<sup>1</sup> We refer to Jesse Medina and David Medina by first names for clarity and intend no disrespect.

killed a young man associated with the 18th Street gang in retaliation for his brother's death. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

In 2011, Tejada was 19 years old. He was not a member of a gang and had no criminal history, apart from a battery arrest that was resolved informally. His father was a member of the 18th Street gang, but the trial court granted Tejada's motion to exclude evidence of family gang associations. Tejada lived in a neighborhood where gangs were active and he was repeatedly victimized.

Jesse was close in age to Tejada and had no criminal history. The two men had not met before the night Tejada shot Jesse. Tejada had met David once. On that occasion, David asked Tejada for money and "got mad" and "just left" when Tejada said he had no money. David had tattoos on his head and seemed to be on drugs.

One evening in October 2011, Tejada and his companions were "hanging out" on Hollywood Boulevard. A group of seven to ten men approached. The group included Jesse and David. David was pushing another man in a wheelchair. Tejada recognized David, but he did not recognize anyone else in the group. After the group passed, Tejada shot Jesse six times, killing him.

Tejada told detectives that he shot Jesse because it made him mad to see David again and because he had too much vodka to drink. An officer asked Tejada if someone threatened him. Tejada said there was "no threat, no swinging, no fights or anything like that." He said that when Jesse's group passed, he followed them from behind and shot Jesse in the back. He said, "When they looked back again I just started shooting. I didn't shoot at the whole crowd though, I just shot [Jesse]." He said, "I knew I was hitting him, probably the whole time." Tejada said he did not feel bad about what happened. He said the incident was not about gangs. At trial, jurors heard a recording of this interview.

Tejada testified that he shot Jesse in self-defense. He said he lied to the police to protect the other people in his group. Tejada said David asked him where he was from. Tejada understood this to be a threat. Tejada answered that he was not from

anywhere, and David said, "Fuck 18." Jesse's group was "trying to gang up on [him]." Some of them wore red. Tejada heard some of them say they were "Bloods," which he understood to mean that they were gang members. They told him to meet him at the corner, which Tejada understood to mean they were going to beat him up. Tejada started to follow the group to the corner, but then got scared and stopped. Jesse turned around and came toward Tejada. Tejada was scared, so he "just started shooting."

Tejada testified about his past experiences with gang violence and said he carried a gun for protection. He said that the last time someone had asked him where he was from, a gang beat him up with brass knuckles, gave him two black eyes, and dislocated his arm. Tejada said he also had been to the hospital as a victim of gang violence other times. There are gangs in his West Los Angeles neighborhood. He has been "hit up" by gangs before, while attending high school and while attending Santa Monica College. His friend was killed by "gang violence."

A gang expert testified for the defense that the words "where are you from" are "[s]ome of those words that one fears to come across." One of Tejada's companions testified that the men in Jesse's group were wearing red, and she understood them to be members of the Bloods gang. Tejada's cousin testified that she could not see what happened and did not hear any arguing before the shots. She said, however, that just before she heard the shots, the other women screamed, "[T]he boys . . . are going to fight." She said that immediately after the shots, Tejada jumped into the car and threw a gun onto the floor. Several defense witnesses testified that Tejada had never been violent and the shooting was completely out of character.

Psychologist Kris Mohandie testified for the defense that prior experiences of threatening behavior or physical violence can enhance sensitivity to threats. He described a "fight versus flight response" that can distort perception. He did not interview Tejada or evaluate him for any diagnosable disorder.

David had previously committed a robbery and was on parole. A police report identified David as an active member of the Evil Klan gang. There was no evidence that Tejada was aware of David's criminal history or his affiliation with the Evil

Klan gang. David did not testify at trial. Defense counsel did not offer evidence of David's prior robbery or his gang membership.

The day after the murder, David killed a member of the 18th Street gang in retaliation for his brother's death. Tejada's counsel offered evidence of this retaliatory killing pursuant to Evidence Code section 1103 to demonstrate that Jesse's group had a character for violence and Tejada could reasonably fear them.<sup>2</sup> The trial court sustained the prosecutor's objection without prejudice pursuant to section 352. It found that the evidence posed a risk of confusion and that its probative value was "nonexistent," unless "Mr. Tejada testifies, and if his testimony opens the door in a way that it becomes more probative than it currently is." Tejada did not ask the court to revisit the issue after he testified.

Tejada moved for a new trial on the grounds that counsel rendered ineffective assistance because counsel did not discover or present evidence that he suffered from developmental trauma disorder and did not object to characterization of Jesse as the "victim." He also contended that the trial court erroneously excluded evidence of David's retaliatory killing.

In support of the motion, Tejada offered a report by Gena Castro Rodriguez, a licensed marriage family therapist, who evaluated Tejada and reviewed extensive records about his history of traumatic experiences, including exposure to domestic violence as a child. She concluded that "early childhood and chronic trauma for [Tejada] have resulted in a likely (provisional) diagnosis of Post Traumatic Stress today." She opined that Tejada's multiple experiences of threat to his life in the community informed his "decisions about personal safety, self-defense and crisis response" and "contributed to the events of October 9, 2011."

Rodriguez explained that "[a]lthough [Tejada] meets criteria for provisional diagnosis of Post Traumatic Stress Disorder (PTSD), Developmental Trauma Disorder . . . better captures the affects of trauma that occurs while the child is developing,"

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<sup>2</sup> All further statutory references are to the Evidence Code.

whereas PTSD "is specifically relevant to diagnosis of individuals who experience a distinct, single incident of trauma, with a disturbance in post trauma function." She described "developmental trauma disorder" as a "new diagnostic framework for understanding the effects of childhood trauma," and said there was "[g]rowing evidence of neurobiological effects of trauma." She said this evidence is "feeding the debate" about whether to include developmental trauma disorder in the Diagnostic and Statistical Manual of Mental Disorders.

Tejeda's trial counsel declared that he was not aware of developmental trauma syndrome and had limited experience in presenting mental health defenses. He also said he was not aware that Tejeda was exposed to domestic violence as a child.

## DISCUSSION

### *Ineffective Assistance of Counsel*

Tejeda's claim that his trial counsel rendered ineffective assistance is not supported by a showing that counsel's representation fell below an objective standard of reasonableness, or a reasonable probability that he would have obtained a more favorable result but for counsel's deficient performance. (*Strickland v. Washington* (1984) 466 U.S. 668, 688, 694.)

### *I*

Tejeda contends trial counsel was incompetent because counsel did not present expert testimony that he was suffering from developmental trauma disorder, and failed to do so because counsel did not adequately investigate his mental condition. Tejeda contends evidence of this disorder may have led the jury to find he acted in self-defense or imperfect self-defense because of a distorted sensitivity to danger. We begin with the presumption that counsel exercised reasonable professional judgment. (*People v. Holt* (1997) 15 Cal.4th 619, 703.) We defer to trial counsel in matters of strategy and trial tactics, unless an action is taken without the benefit of substantial inquiry or is made without any possible satisfactory explanation. (*People v. Frierson* (1979) 25 Cal.3d 142, 162-163.)

Trial counsel declares his experience with presenting mental defenses was limited and he was unaware of the existence of developmental trauma syndrome. But he conducted a substantial inquiry into possible mental defenses when he investigated Tejada's history of victimization, subpoenaed records of treatment for injuries Tejada sustained in a gang assault, and consulted with Mohandie about the effect those experiences may have had on Tejada's perception of threats.

Mohandie has a Ph.D. in clinical psychology and is board certified in police and public safety psychology. He worked as a psychologist for the Los Angeles Police Department for 14 years counseling officers and civilian employees after shootings. Mohandie's many articles on the effects of violence on victims have been published in peer-reviewed journals. This case is unlike *People v. Frierson, supra*, 25 Cal.3d 142, 159, in which trial counsel did not consult with any expert about the effect of drugs the defendant took on the day of the crime. Counsel was entitled to rely on his qualified expert.

Tejada has not demonstrated that the result would have been more favorable if counsel had investigated developmental trauma disorder and presented evidence of childhood exposure to domestic violence. Tejada has not demonstrated that developmental trauma disorder is a diagnosable condition or that he has actually been diagnosed with PTSD. He has not demonstrated how evidence of either condition would have swayed the jury in ways that Mohandie's testimony about heightened sensitivity resulting from past victimization did not.

Rodriguez describes developmental trauma disorder as a "new diagnostic framework for understanding the effects of trauma," about which there is "growing evidence," "feeding the debate" about whether it should be included in the Diagnostic and Statistical Manual of Mental Disorders. Her diagnosis was "provisional[ly]" PTSD, but she explained this did not really fit Tejada's history. She explained that a provisional diagnosis means "the subject reports symptoms consistent with criteria for those conditions, but further assessment is needed to formally diagnose." That this provisional diagnosis would have resulted in a more favorable outcome is highly speculative.

## II

Trial counsel also did not render ineffective assistance when he did not offer evidence that David committed a prior robbery and was an active member of the Evil Klan gang. Tactical reasons for not presenting the evidence are apparent. David's criminal history had little probative value because he did not testify as a witness and Tejeda was unaware of it. David's gang membership was collateral, could have opened the door to unfavorable gang evidence that Tejeda successfully moved to exclude, and was not evidence of David's violent character. (*People v. Memory* (2010) 182 Cal.App.4th 835, 859.)

## III

Tejeda contends trial counsel rendered ineffective assistance because counsel did not object to references to Jesse as the "victim." The term "victim" is not unduly inflammatory, and there were legitimate tactical reasons not to quibble over its use. Tejeda has not shown that the result would have been any different if counsel had objected to the term.

### *Order Excluding Evidence of David's Violent Character*

The trial court acted within its discretion under section 352 when it excluded evidence that David committed a retaliatory murder one day after Tejeda killed his brother.

David was present when Tejeda shot Jesse, but David was not a victim and did not testify as a witness. David killed a member of the 18th Street gang in retaliation for his brother's death. Tejeda offered evidence of this subsequent murder pursuant to section 1103 (conduct in conformity with character of victim) to prove "the character of the people with whom [Tejeda] was dealing." His counsel said, "It's offered for the purpose to show that birds of a feather, they fly together." The trial court excluded the evidence under section 352, without deciding whether it was admissible under section 1103. Its ruling was without prejudice to reconsideration if Tejeda testified. "[I]t seems that the issue of David Medina is somewhat dependent on the defendant's testimony";

"right now my ruling is subject to revision . . . subject to modification if Mr. Tejada testifies, and if his testimony opens the door in a way that it becomes more probative."

The trial court reasonably concluded that evidence of the retaliatory murder of an 18th Street gang member would have created confusion and collateral questions about Tejada's connection with that gang, evidence the court excluded at Tejada's request. David's subsequent acts of violence were not probative because he was neither the victim nor a witness and Tejada was not aware of his violent character. Tejada did not re-raise the issue after he testified, and his testimony did not increase its probative value. He testified that he recognized David from a prior instance when David had asked him for money, and that David seemed "angry" and to be on drugs. But Tejada did not testify that he believed David was violent or that he intended to shoot David rather than Jesse.

#### DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Lisa B. Lench, Judge  
Superior Court County of Los Angeles

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