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Man convicted in killing of fellow prisoner appeals conviction, alleging he was prejudiced by expert's testimony

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A man convicted in the 2010 fatal ambush of a fellow Concord inmate says prosecutors painted him in an unfair light at trial by admitting into evidence other gang-related misdeeds that he had no part in.

In his appeal to the state Supreme Court, Thomas Milton, 33, does not object to testimony that he was affiliated with the white supremacist gang, the Brotherhood of White Warriors, while an inmate at the state prison in Concord.

But he does take issue with the extent to which the organizational structure of the prison gang and its criminal activities were discussed by an expert witness for the prosecution. Introduction of that evidence prejudiced Milton in the eyes of the jury, according to his appellate attorney, Richard Guerriero of Keene.

"It's not our position that the gang evidence was inadmissible but that it went too far in this case," Guerriero said during oral arguments Wednesday.

A Merrimack County jury convicted Milton in December 2014 of accomplice to reckless second-degree murder, assault by prisoner and falsifying evidence. Prosecutors said he carried out the attack in July 2010 with fellow inmate William Edic, and the assault was in retaliation for snitching on two members of the gang.

Edic is also appealing his convictions on similar charges but on different grounds. He is arguing that the lower court erred in limiting his cross-examination of key witnesses and by not allowing others to testify.

Both men were sentenced to a minimum of 38½ years for their role in the fatal attack.

The incident occurred during lunchtime in a second-floor group cell. Milton and Edic allegedly lured the prisoner, Anthony Renzulla, into the unit and then jumped him from behind. Renzulla, a 42-year-old inmate who at times walked with a cane, died of his injuries in 2011.

Milton was extradited to New Hampshire from Florida in summer 2013 following his arrest in the murder case.

Prior to the start of Milton's superior court trial, prosecutors filed a motion seeking to admit expert testimony from Tim Coulombe, a former investigator for the state's department of corrections, about the prison gang and Milton's affiliation. They sought to prove that Milton was a member of the gang and, with Edic, was seeking retaliation against Renzulla for being a "rat."

Assistant Attorney General John McCormack explained further Wednesday that while jurors would have generally understood prisons to be dangerous places, they would not have necessarily known about the inner workings of prison gangs. He said prosecutors needed to lay that foundation or otherwise jurors might have viewed the violent attack on Renzulla as senseless and random.

Chief Justice Linda Dalianis said she struggled to understand the role of the expert witness in proving the state's case. She said Milton confirmed his gang affiliation and involvement in the July 2010 incident.

"It would be a shame for this case to be reversed because the state thought it needed evidence at trial that was prejudicial and probably didn't need, because, it seems to me, the principles of fact is whether or not Mr. Milton participated in the kicking," she said, noting that witness testimony may have been enough.

McCormack disagreed, saying Milton downplayed his involvement in the murder by admitting only to punching Renzulla in the jaw and not to the more serious kicking and stomping. Further, McCormack said, without the expert testimony, jurors would not have had the broader context to understand Milton's motive and intent as a gang member.

Prior to Milton's trial, his defense team had objected, in part, to the introduction of certain evidence, including "other BOWW crimes, BOWW retaliation against witnesses generally, and other BOWW 'rules' and practices," Guerriero wrote in his brief to the Supreme Court. That included the gang's motto: "God forgives, BOWW don't."

He wrote that Milton had no contact with the gang in the two years following his release from prison on other charges and "was, effectively, no longer a member."

“For that reason, the defense contended, it was not reasonable to attribute BOWW crimes to Milton, nor was it reasonable to think that witnesses would be reluctant to testify against him because of his prior gang affiliation while in prison.”

Guerriero said during oral arguments that the defense raised further objections during trial, but that the judge overruled. The evidence, he said, went beyond the scope of the case at hand and led jurors to believe that every gang member is guilty by default of another's bad deeds.

Based on that argument, Senior Associate Justice Gary Hicks asked Guerriero for further clarification on his definition of a gang. “If we're in a gang, what does that mean?”

“What I think it should not mean is that every bad act I commit should not be contributed to you,” Guerriero responded.

The justices took the case under advisement and will issue an order at a later date.

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