

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1129

KA 19-00446

PRESENT: SMITH, J.P., PERADOTTO, CARNI, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CYRELL HAYGOOD, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PIOTR BANASIAK OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (KENNETH H. TYLER, JR., OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County (Gordon J. Cuffy, A.J.), rendered January 30, 2019. The judgment convicted defendant upon a jury verdict of murder in the second degree and criminal possession of a weapon in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of murder in the second degree (Penal Law § 125.25 [1]) and criminal possession of a weapon in the second degree (§ 265.03 [3]). We reject defendant's contention that Supreme Court violated his right to be present at a material stage of trial when it excluded him, but not his attorney, from portions of the *Molineux* hearing, specifically, in-chambers discussions concerning an affidavit in which a witness alleged that he had knowledge of defendant's gang affiliation. The identity of the witness was shielded by a stipulated protective order, and we therefore conclude that the "potential for input from defendant was outweighed by valid concerns for the witness[']s safety, underlying the need for defendant's exclusion" (*People v Baker*, 139 AD3d 591, 591 [1st Dept 2016], *lv denied* 28 NY3d 1025 [2016]; see *People v Frost*, 100 NY2d 129, 135 [2003]; *People v Israel*, 176 AD3d 413, 414 [1st Dept 2019], *lv denied* 34 NY3d 1129 [2020]).

We conclude that the testimony regarding defendant's membership in a gang was properly admitted at trial inasmuch as it was relevant to establish motive and intent and to explain defendant's relationship with the victim (see *People v Bailey*, 32 NY3d 70, 83 [2018]; *People v Polk*, 84 AD2d 943, 945 [4th Dept 1981]) and the prejudicial effect of that testimony did not outweigh its probative value (see *People v Alvino*, 71 NY2d 233, 241-242 [1987]). Moreover, the court alleviated

any prejudice to defendant by providing an appropriate limiting instruction (see generally *People v Cruz*, 261 AD2d 930, 930 [4th Dept 1999], *lv denied* 93 NY2d 1016 [1999]).

Defendant's sentence is not unduly harsh or severe. We have examined defendant's remaining contentions and conclude that none warrants modification or reversal of the judgment.

Entered: January 28, 2022

Ann Dillon Flynn
Clerk of the Court