

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Case No. 07-10142-JTM

JERMAL CAMPBELL, et al.,
Defendants.

MEMORANDUM AND ORDER

This motion serves to rule on the admissibility of several prior crimes that the government would like to present, pursuant to Rule 404(b). The following defendants have filed objections to 404(b) evidence: (1) Lonnie Wade (Dkt. No. 929); (2) Corey Cornelius (Dkt. No. 932); (3) Darryn Frierson (Dkt. No. 931). After a careful review of the government's 404(b) notice, as well as the defendants' objections, the court denies in part and grants in part each motion.

Fed. Rule Evid. 404(b) precludes "evidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show actions in conformity therewith." However, such evidence may be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Fed. Rule Evid. 404(b).

Admissible Prior Crimes

The following prior crimes are deemed admissible, assuming that counsel provide proper foundation at trial:

Darryn Frierson

1. WPD 94C7503 - Officers obtained a waiver to search from Darryn Frierson to look in his house for Omar Valentine (a NRC). Inside the residence officers located several firearms. Neighborhood Crips Cortez Grayson (also co-defendant), Troy Langston (co-defendant), and Dewaun Richardson were all inside the house. Frierson denied being a Neighborhood Crip, but said a lot of them hang out with him.
2. WPD 91C82827 -- Officers were dispatched to the area of 2600 N. Ash. Upon arrival in the area officers saw three males running through a back yard at 2607 N. Ash. An officer found a storage shed behind 2608 N. Piatt and located Darryn Frierson and Cortez Grayson (Crip, co-defendant) both hiding inside. Officers checked the area where the men were observed running through and located two handguns.
3. WPD 95CI00027 - Officers stopped a truck being driven by Darryn Frierson, who took off running. Eventually, he was caught with a handgun.
4. WPD 94C22059 -- Darryn Frierson was the victim of a drive by shooting and admitted that he returned fire on the shooters.

JonEarl Smith

1. WPD 93C122090 - Smith was stopped in a car with Domanique Edmondson (Crip). Officers received consent to search the car and located a loaded .380 under the front seat. Smith also had .380 ammunition in his pocket.
2. WPD95C62900 -- Officers went to a north Grove address looking for Junian Johnson (NRC and co-defendant). Officers located Johnson as well as Edward Walker (NRC and codefendant). Officers noticed that there was a car sitting in the drive and went over to it. Officers found Smith sitting in the passenger seat. When the officers approached Smith

he noticed that Smith had a handgun sticking out of his pocket. A search of the car produced a .22 cal Intertec rifle under the front seat. Smith stated that he was holding the gun for another person.

3. 94C113582 -- Smith was stopped by WPD officers in a car with Isaac Loudermilk (NRC) and James Michael McAlpine (NRC). WPD officers searched Smith's car and found a loaded semi automatic handgun (which was stolen) lying on the passenger side floorboard. Smith was questioned by officers and informed them that he was not involved in the drive by. He admitted that he knew the victims of the drive by and that the Hoover Street Crips were feuding, at that time, with the NHCs. Smith admitted to being an NHC. At the time of his arrest he was wearing a North Carolina jacket, blue shoestrings and blue thread woven into his hair braids. His car also had five bullet holes in it.
4. 95C5803 -- Smith entered the Dollar General store wearing a ski mask and gloves, armed with a .32 caliber revolver. He attempted to open the cash drawer himself but when it would not open he ordered two employees, at gunpoint, to open the register. An employee opened the register for Smith and walked away. He took \$62.00 in United States currency out of the drawer and then fired two rounds from the gun. One bullet struck the employee in the buttocks and exited out her pelvic/upper thigh area. The other bullet went into the ceiling. Smith left the area in a stolen car. However, before taking off the employees were able to note the car's description and tag number. This information was transmitted to law enforcement. The next day two WPD officers saw the car at 9th and Grove Streets and attempted to stop it. Eventually, the car stopped and three of the four occupants bailed out of the car and fled. Officers caught two of the three and identified them as Terrence Smith (NRC) and JonEarl Smith. Willie King (NBC)

stayed in the car. The fourth person was never caught. Smith was wearing a North Carolina jacket. A gun was found in the car and Smith had marijuana in his pocket. During interviews, King stated that Altay Taylor and Smith came over and told him that Smith had committed the robbery with a gun. Smith confessed to the robbery and shooting of the employee. He claimed that the shooting was accidental. Smith gave a written confession and King gave a written statement. The gun recovered in the car ballistically matched the gun used to fire the shots in the Dollar General store robbery. Smith was charged and convicted, as an adult even though he was 16, of aggravated robbery (two counts), aggravated battery and criminal deprivation.

5. 99C36532 -- Officers saw Smith driving northbound on Fairmount. He made a turn in the car, pulled it over and parked. Officers went to the location where he made the turn and recovered a Smith and Wesson .244 cal. pistol. Smith was taken to the 6th floor and interviewed by Det. Reynolds. Smith confessed to possessing the gun for a couple of days for protection.

Lonnie Wade

1. 97C108061197C108061197C109256/97C109258/97C109259/97C109291 --WPD officers attempted to stop a car. Eventually, the four passengers in the car bailed out. The backseat passenger got out of the car and pointed a long rifle at one of the officers, then dropped it and ran. This person was later caught in the area and identified as Lonnie Wade. Officers also found Larry Triplett (Crip) hiding in the area. Since the officers knew that one NRC hangout was at 1012 N. Ash, they went to that house. In the yard in front of the

residence, the officers found a .357 revolver and a Cobray Mac **11** under a sofa in the yard. (This search occurred with the consent of the owner, Anita Johnson, Junian Johnson's mother.) Junian Johnson (co-defendant), Shawn Wallace and Earl Crabtree (Crips) were all found inside the house. Officers also found crack cocaine in the backyard of this house.

2. 98C70429 - On July 20, 1998, Brice Peters (9 yoa) was riding his bike in the area of 26th and Chautauqua Streets. A man wearing a blue shirt and com rows approached Peters, pushed him off his bike and took it. Peters walked home and called 911. WPD officers were in the area looking for a suspect. They saw Lonnie Wade and Ronald Wilson (NRC) sitting on bikes. Wilson was actually sitting on Peters' bike, but Lonnie Wade matched the description of the robber (wearing a blue shirt and com rows) . When Lonnie Wade saw the officers he took off running and could not be found. Wilson was interviewed by detectives but denied any knowledge of the robbery. He stated that he got the bike from another person, not Lonnie Wade. Peters looked at Wilson and said that he was not the man that robbed him. Lonnie Wade was charged and convicted of robbery. He was sentenced to 44 months in prison.
3. 03C49043 -- Officers stopped a car being driven by Curtis D. Profit. Wade was a passenger. Wade gave a false name of Cherone Johnson, who is a NRC that is in prison. A loaded Beretta 92F was found in the car, along with \$500 in cash on Profit and a large quantity of crack cocaine.
4. 05C71955 - On September 19, 2005, Artis Dameron was at a drug house at 1326 N. Erie. He was confronted by a man he knew as "L." "L" reportedly pulled out a gun, pointing it at Dameron which resulted in a momentary struggle between the men for the gun. "L"

was able to hang onto the gun and as Dameron ran for the front door, "L" shot him one time in the right calf Dameron told detectives that "L" was a pimp for two girls that he tried to hook up with. He stated that the girls were working in the area of 12th and Lorraine Streets. Dameron was later presented with a photo line up and he identified Lonnie Wade as "L" the man that shot him. Lonnie Wade was charged with aggravated battery. During the trial, he was allowed to enter a plea of guilty to criminal threat.

Non-Admissible Prior Crimes

The following prior crimes are not admissible:

Darryn Frierson

1. WPD 90C114392 - Officers stopped a car occupied by Darryn Frierson, Marcus Tuggle, and Jose Wheeler (Crips).
2. WPD 91C21824 - Officers stopped a car occupied by Cortez Grayson (Crip, co-defendant) and Darryn Frierson, as the passenger.
3. WPD 02C80949 - An officer documented Darryn Frierson at the Cotillion with other Crips present were Jamal Henderson, Calvin Alston, Trim Cornelius and Donta Davis (codefendant).

JonEarl Smith

1. WPD 93C92977 - Smith and Joe Parks were victims of a drive by shooting.
2. WPD 93CI03384 -- Smith was a backseat passenger in a car with other gang members in the car. After a car stop, officers noticed a handgun laying under the front passenger seat. An officer also found a BB rifle between the front seats.
3. WPD 94C61361 - Smith was with two other Crips (Randy Williams and Phillip Huggins) when the men were shot at. After the shooting officers were dispatched to take an arson

report at the Williams and Huggins residence on North Holyoke. A Molotov cocktail (that had been lit at one time but had gone out) was found in the house. Huggins admitted that he believed the suspects of the shooting and the attempted arson were some rival Blood gang members named Nathan King, Deandre King, Devin and Towan. He (Huggins) stated that he (Huggins) and Williams had been having problems with them recently and the Kings blamed he and Williams for the house fire that had burned down their house over the previous Memorial Day weekend.

4. WPD 94C85160 -- Officers stopped Smith with passengers in the bed of his pickup. The officers found two blue bandanas and a color photo of several black males wearing blue bandanas and flashing gang signs.
5. WPD 94C85276 -- Smith and Altay Taylor (ICG) were together.
6. WPD 95C1257 -- A WPD officer attempted to stop a car, in the area of 2300 N. Burns. The occupants bailed out of the car. All were caught. The driver was Smith. Smith was wearing a North Carolina jacket. The other two males were also wearing blue.

Lonnie Wade

1. 95C47981 - Susan Wade told officers that she was afraid of Lonnie due to his involvement in gang activity.
2. 98C57003 - WPD officers stopped a car occupied by Lonnie Wade, the driver, and the front seat passenger, Curtis Profit (Crip).
3. 03C49337 - WADE was the passenger in a car with Jermall Campbell (co-defendant and Crip) driving.
4. WPD 06C96784 and 80 Case Number 088008297 - Homer Thompson, Wade's younger

brother, was shot by Dontreal Banks after an encounter in a local bar where words are exchanged between the Crips and Bloods. This leads to Wade's encounter in the Sedgwick County Adult Detention Facility with Mr. Banks.

More Information Needed

Before ruling on admissibility, the court needs more information on the following prior crimes/bad acts:

JonEarl Smith

1. 95CI02505 -- An officer stopped Smith for a traffic violation. The officer contacted Smith at the car who consented to the search of his car. Smith gave consent and a baggie of marijuana was found under the drivers seat.

Specifically, the court would like to know if anyone else was in the car with Smith during this incident.

2. 95CI02926 -- Officers stopped a car driven by Altay Taylor for having an expired tag. The passenger was Smith. Officers found a small bag of marijuana and crack cocaine. Officers noted that Smith was wearing gang attire. Taylor said that Smith was a gang member, an NRC. Taylor claimed to be an Insane Crip.

Specifically, the court would like to know where the drugs were found.

IT IS ACCORDINGLY ORDERED this 27th day of February, 2009.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE