

Music on cellphone isn't evidence of gang ties, state Supreme Court says

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The state Supreme Court has thrown out the convictions of three men in what police called a gang-related shooting, saying Latin music on one defendant's phone was not evidence of gang ties.

By [GENE JOHNSON](#)

The Associated Press

The Seattle Times

Washington's Supreme Court has thrown out the convictions of three men in what police called a gang-related shooting, finding among other things that music on one defendant's phone was not evidence of gang ties.

The justices Thursday unanimously granted a new trial for Ricardo Juarez DeLeon, his brother Anthony DeLeon and Octavio Robledo, who were convicted of first-degree assault in the drive-by shooting in Yakima County in 2009.

The key issue in the appeal was whether statements the men gave to jail officials — in which they identified themselves as present or former gang members and said they couldn't be placed in a cell with rival gang members — were made under the threat of bodily harm from those rivals, and therefore coerced. Writing for the court, Justice Susan Owens said they could not be used against the men at trial without violating their constitutional rights.

“In this case, the defendants made self-incriminating statements to avoid a credible risk of physical violence,” [Owens wrote](#). “By their very nature, such statements cannot be considered voluntary, and they should not have been admitted.”

The Court of Appeals had also found the statements to be involuntary but said their admission was harmless because other evidence corroborated involvement in the Norteno gang. That included Anthony DeLeon's musical taste: The Court of Appeals

cited several songs found on his phone, including one by the popular Latin band Los Tigres Del Norte.

The Supreme Court said the use of the statements at trial was not harmless, but rather the strongest evidence of gang affiliation against the men. And the justices were particularly troubled by the appeals court's findings regarding the music.

"Los Tigres Del Norte has been one of the more prominent bands in Latin music for decades," Owens wrote. "Since forming in 1968, Los Tigres Del Norte have sold 32 million albums. They have won five Latin Grammy Awards, and they have performed in front of U.S. troops serving abroad. There is no support in the record for the contention that enjoying their music is evidence of gang involvement.

"While this may not be the primary issue in this case, we felt that it was nonetheless important to take this opportunity to remind courts to exercise far more caution when drawing conclusions from a defendant's musical preferences."

Yakima County Prosecutor Joseph Brusich said he was disappointed.

"Three guys who are active gang members, who shot and damn near killed a guy, have been remanded for a new trial," he said. "That's never good when you're a prosecutor."

The music was a small piece of the other corroborating evidence of gang ties, which included their clothing and tattoos, he said.

The shooting occurred in Sunnyside the night of May 9, 2009. Two men, Ignacio Cardenas and Miguel Acevedo, were standing on a sidewalk and flashed a gang sign at a passing car; they mistakenly believed their friend was inside.

Instead, the car pulled a U-turn, and shots were fired out the passenger window. Cardenas suffered a near-fatal bullet wound to the abdomen.

Police chased the car on Interstate 82 at speeds reaching 110 mph before finally stopping it with spike strips.

The defendants argued at trial that police had stopped the wrong car and that they weren't involved in the shooting.

The men received exceptional sentences under a state law that allows additional prison time for crimes found to have been committed for the benefit of a criminal street gang. Robledo and Ricardo DeLeon were each sentenced to 53 years. Anthony DeLeon received 83 years.

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