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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1719**

State of Minnesota,
Respondent,

vs.

Alexis Giovanni Barrow,
Appellant.

**Filed September 4, 2018
Affirmed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-CR-16-3690

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Melissa Sheridan, Eagan, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his three felony convictions, arguing that the district court abused its discretion by admitting evidence of a prior uncharged offense and permitting expert testimony about gang activities and gang members. We affirm.

FACTS

In the spring of 2016, rival gangs in St. Paul posted rap videos on social media encouraging violent actions toward each other's members and families. T.R. was a former member of one gang, the Bang Out Boys (BOB); his brother, S.L., was a current member of BOB's rival, the Eastside Boys. T.R. was upset because some of the BOB rap videos threatened his mother and other family members. Although he left the gang years earlier, he reposted threatening language from one of S.L.'s rap videos on social media.

On May 19, 2016, T.R. was driving to his mother's home when he saw a blue car in which appellant Alexis Giovanni Barrow was riding. Barrow and T.R., who had known each other all their lives, recognized each other. T.R. also knew the driver, Cicero Taylor. T.R. quickly turned his car around, because the blue car was near T.R.'s mother's house. Barrow stepped out of the car and shot at T.R.'s car. T.R. believed that Barrow was attempting to kill him.

Barrow and Taylor sped away and T.R. followed them. T.R. abandoned the chase when it entered a residential area near a school, returned to his mother's home, and called 911. After police stopped Barrow and Taylor's vehicle, T.R. identified them in a show-up. Barrow was charged with seven felony offenses.

At trial, the state presented police witnesses who described the arrest of Barrow and Taylor,¹ and the investigation. T.R. testified about a rap video made by BOB gang

¹ Cicero Taylor was convicted of assault, drive-by shooting, unlawful possession of a firearm, and committing a crime for the benefit of a gang in connection with this incident. *State v. Taylor*, 910 N.W.2d 60, 63 (Minn. App. 2018), *review denied* (Minn. June 19, 2018).

members that referred to an incident in which his brother, S.L., was shot. The video does not identify the shooter, but Barrow, Taylor, and two other men appear in the video. The video was played for the jury during the testimony of Officer Natalie Davis, who testified as a gang expert over Barrow’s objections. The jury found Barrow guilty of four of the seven charged offenses.

Barrow appeals his convictions of drive-by shooting for the benefit of a gang, second-degree assault for the benefit of a gang, and ineligible possession of a firearm.

D E C I S I O N

I. The district court did not abuse its discretion by admitting evidence of a prior shooting through a rap video posted on social media.

“Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b); *see State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965). Such evidence may be admitted for other purposes, including “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b). We review a district court’s evidentiary decisions for abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016).

Barrow argues that the district court abused its discretion by admitting the rap video that referred to the prior shooting directed at S.L.—a crime other than the ones Barrow was charged with. In the video, Barrow and three other men rap about the shooting; the video does not identify Barrow as the shooter. The district court ruled that the video is not *Spreigl* evidence and its admission was necessary to place the crimes with which Barrow was

charged in context “and to explain a motive for the alleged crime.” Barrow contends that the video’s prejudicial impact far outweighed its probative value. We disagree for two reasons.

First, we are not persuaded that the state used the evidence of the prior shooting contained in the video as *Spreigl* evidence. The video does not depict the shooting or identify the shooter. And Barrow’s presence in the video does not, in and of itself, implicate him in S.L.’s shooting. At most, it reflects Barrow’s support of a fellow gang member’s past conduct and Barrow’s intent to intimidate and disrespect a rival gang. It does not constitute evidence that Barrow committed a prior crime or bad act.

Second, we are not persuaded by Barrow’s argument that evidence of his affiliation with BOB had minimal probative value. Three of the charges against him required the state to prove he committed criminal acts for the benefit of a gang. Minn. Stat. § 609.229, subd. 2 (2016). “Gang-related evidence, including evidence of criminal activity by other gang members, is admissible to prove that the defendant committed a crime for the benefit of a gang.” *State v. Matelski*, 622 N.W.2d 826, 832 (Minn. App. 2001), *review denied* (Minn. May 15, 2001). The video celebrating the prior shooting of S.L. tends to show that Barrow was an active member of a criminal gang and was motivated to commit the charged crimes on the gang’s behalf. As such, the video—and its reference to the prior shooting—is highly relevant to disputed elements of the state’s case.

Barrow argues that the prejudicial effect of the evidence outweighed any probative value because there was no serious dispute that Barrow was a gang member or that the ongoing feud between BOB and the Eastside Boys motivated the drive-by shooting of T.R.

We disagree. Even if Barrow's involvement with BOB and motivation to commit the shooting were undisputed, the state was required to prove beyond a reasonable doubt that BOB is a criminal gang and Barrow is one of its members. "Criminal gang" is a technical term, statutorily defined as a group of three or more people, which, as a primary activity, commits one or more of several specified offenses; has a common name, sign, or symbol; and includes "members who individually or collectively engage in or have engaged in a pattern of criminal activity." Minn. Stat. § 609.229, subd. 1 (2016). The video was evidence that BOB was composed of more than three people, BOB members had engaged in specific criminal acts, and BOB had an ongoing dispute with S.L.

Indeed, even if Barrow had offered to stipulate to being a gang member, the district court would not be required to exclude the video evidence. *Matelski*, 622 N.W.2d at 832 (declining to depart from the rule that "district courts generally do not abuse their discretion in not allowing defendants to preclude prosecution evidence by an offer to stipulate"). Based on our careful review of the record, we conclude the probative value of the video was not substantially outweighed by the risk of unfair prejudice. The district court did not abuse its discretion by admitting evidence of the prior shooting referenced in the video.

II. The district court did not abuse its discretion by permitting Officer Davis to testify as an expert about gangs.

Minn. R. Evid. 702 permits "a witness qualified as an expert by knowledge, skill, experience, training, or education" to testify in the form of an opinion, if the expert's specialized knowledge "will assist the trier of fact to understand the evidence or to determine a fact in issue." The state may offer expert testimony if a defendant is charged

with committing a crime for the benefit of a gang. *State v. Vang*, 774 N.W.2d 566, 576 (Minn. 2009). While such testimony should not duplicate “first-hand knowledge testimony,” it is admissible if it “adds precision or depth to the jury’s ability to reach conclusions about matters that are not within its experience,” and its probative value outweighs potential prejudice. *Id.* (quotation omitted). We review the admission of gang-expert testimony for abuse of discretion. *Id.*

Barrow does not challenge Officer Davis’s expert testimony regarding Barrow’s BOB membership, the gang’s rivalry with the Eastside Boys, and the reasons T.R. was targeted. But Barrow argues that the district court abused its discretion by permitting the officer to testify about gang activities generally, including the centrality of respect and retaliation in the gang’s culture. He characterizes this testimony as “irrelevant, unhelpful and unfairly prejudicial.” We disagree.

In *State v. Jackson*, our supreme court rejected a similar challenge to an expert’s general testimony about a gang’s identifying signs and symbols, its criminal activities, and the role of respect or disrespect in the gang’s culture. 714 N.W.2d 681, 689 (Minn. 2006). The supreme court held the testimony was admissible because it helped the jury decide whether commission of crimes was a primary gang activity and whether Jackson committed the murder for the gang’s benefit—essential elements of the charged offense. *Id.* at 692. Likewise, in *State v. Thao*, the supreme court affirmed the admission of general gang testimony, noting that a gang expert’s testimony about the type of incidents that were likely to provoke retaliation was helpful to prove motive. 875 N.W.2d 834, 841 (Minn. 2016); *see also State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012) (concluding that

admission of gang-expert testimony was not plain error because “[g]eneral testimony about the workings of a gang or the types of activities in which gangs engage is not considered testimony that reaches an ultimate legal conclusion” and such testimony “is often necessary to prove that a crime was committed ‘for the benefit of a gang’”).

Not only does this caselaw generally support the district court’s exercise of discretion, but this court affirmed admission of Officer Davis’s nearly identical testimony in the companion case involving Barrow’s driver. *Taylor*, 910 N.W.2d at 63. In *Taylor*, Officer Davis testified about BOB’s history and general activities, and explained “the role of respect, retaliation, and social media.” *Id.* at 69. This court determined this testimony was helpful to the jury, did not express an opinion on the ultimate issue of guilt, and was not unfairly prejudicial. *Id.* at 69-70.

As in *Taylor*, Officer Davis’s testimony assisted the jury in determining whether BOB met the statutory definition of a “criminal gang,” a definition that may differ from a lay person’s understanding of the term. Her explanation of how gangs use social media, including rap videos, to disrespect rival gangs provided context for a gang’s motivation for committing a crime. And her testimony did not address the ultimate question of whether Barrow committed the charged crimes for the benefit of a gang. On this record, we conclude that the district court did not abuse its discretion by admitting Officer Davis’s challenged testimony.

Finally, Barrow asserts in a pro se supplemental brief that the state committed a *Brady* violation. He does not identify what exculpatory evidence the state failed to provide, nor does he support his argument with reference to caselaw or statute. *See State v. Bartylla*,

755 N.W.2d 8, 22 (Minn. 2008) (declining to “consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority”). Accordingly, we decline to consider this argument.

Affirmed.