

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0574**

State of Minnesota,
Respondent,

vs.

Trinidad Jesus Garcia,
Appellant.

**Filed April 4, 2022
Affirmed
Cochran, Judge**

Chisago County District Court
File No. 13-CR-19-185

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Janet Reiter, Chisago County Attorney, David Hemming, Assistant County Attorney,
Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and
Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant was convicted of felony drive-by shooting and felony unlawful firearm possession. In this direct appeal, appellant argues that the district court abused its discretion by (1) admitting evidence of appellant's involvement in a previous shooting,

(2) denying appellant's request to modify the cautionary jury instruction regarding that evidence, and (3) imposing an aggravated sentence on the basis that appellant is a "dangerous offender" within the meaning of Minn. Stat. § 609.1095, subd. 2 (2018). We affirm.

FACTS

On March 1, 2019, M.S. was driving northbound on I-35 in Chisago County. M.S. was traveling in the left-hand lane. As he passed a BMW in the right-hand lane, M.S. heard a loud bang, and something hit the side of M.S.'s pickup truck. M.S. looked in the direction of the noise and saw what appeared to be a bullet hole in the door of his truck. M.S. then called the police. While he was on the phone with the police, the BMW sped past M.S., began driving erratically on the snow-covered road, and went into a ditch.

During the incident, a state trooper was parked on the northbound side of I-35. The trooper heard a complaint over dispatch of a shooting involving a BMW and observed in his rear-view mirror as a BMW entered the center ditch of the interstate. The trooper and another police officer approached the BMW, opened the driver's door, and asked the driver where the gun was located. The driver, later identified as appellant Trinidad Garcia, stated that the gun was in his front pocket. The officers ordered Garcia to crawl out the front passenger door of the car. Once Garcia was out of the car, the officers handcuffed Garcia and removed a handgun from the front pocket of his sweatshirt.

Another officer arrived on the scene and observed a bullet hole in the passenger door of M.S.'s truck. M.S. did not know the driver of the BMW, and there had been no interaction between him and Garcia before the shooting.

The state later charged Garcia with (1) second-degree assault with a dangerous weapon in violation of Minn. Stat. § 609.222, subd. 1 (2018), (2) drive-by shooting at an occupied vehicle in violation of Minn. Stat. § 609.66, subd. 1e (2018), and (3) possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(2) (2018).

Evidence of Other Bad Acts

Before trial, the state filed notice that it intended to offer *Spreigl*¹ evidence of three prior bad acts allegedly involving Garcia. Garcia moved the district court for an order prohibiting the admission of that evidence, and the district court held a contested hearing on the matter in July 2019.

Relevant to this appeal, the state presented testimony at the hearing about a drive-by-shooting incident that occurred in West St. Paul on February 26, 2019. The state first presented the testimony of the victim of that incident, N.B. N.B. testified that she was driving to work in West St. Paul just before 7:00 a.m. on February 26. As she prepared to make a U-turn, N.B. saw a black Buick in the opposite lane. The Buick was driving towards her slowly. As the Buick drove past, the driver was “glaring” at her. After making the U-turn, N.B. passed the Buick. She then reached a stop sign and stopped in the right-hand turn lane. While she was stopped, the Buick came up on her left, stopping slightly behind her in the left-hand turn lane. As she was getting ready to turn right, N.B. “heard a big bang.” She looked over at the Buick and noticed that the passenger window

¹ *Spreigl* evidence refers to evidence of prior crimes or other bad acts. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)).

was rolled down. When she arrived at work about three minutes later, N.B. saw that there was a bullet hole in the driver's side rear door of her car, and she called the police.

N.B. testified that the black Buick involved in the shooting did not have license plates and had a "yellow paper" in the window, which she understood to mean that the owner "got a new car and . . . [was] waiting to get their license plates." She stated that the driver of the black Buick was in his 20s, "mixed" race, light-skinned, and had dark, longer hair. During her testimony, N.B. identified Garcia as the person she saw driving the black Buick.

The state then presented testimony from a police investigator who investigated the West St. Paul shooting. The investigator testified that the bullet entered the rear driver's side door of N.B.'s car and went through the rear driver's side seat. Officers recovered a bullet fragment from the passenger side floor in the rear of N.B.'s car. The investigator also obtained video footage of a nearby intersection from the Minnesota Department of Transportation (MNDOT), which showed a black Buick passing through the intersection approximately five minutes after the shooting. The Buick matched the physical appearance and direction of travel that N.B. described to police.

Several days later, the investigator saw a news story about the shooting incident involving Garcia in Chisago County and noticed similarities between the Chisago County and West St. Paul shootings. Believing Garcia might be a suspect in the West St. Paul shooting, she searched for Garcia in several law enforcement databases and learned that Garcia had been involved in a traffic stop in St. Paul on February 15, 2019—11 days prior to the West St. Paul shooting. The body-worn-camera footage of the traffic stop showed

that Garcia was driving a black Buick that matched the appearance of the Buick depicted in the MNDOT video. The investigator stated that the physical appearance of Garcia from the body-worn-camera footage was “very similar” to the description provided by N.B. after the West St. Paul shooting. She testified that the traffic citation from the St. Paul traffic stop showed that the Buick had a 21-day temporary tag in the window and no license plates.

The investigator testified that she obtained the vehicle identification number (VIN) of the Buick from the St. Paul traffic stop and found the Buick at a police impound lot. The Buick had been impounded after it was found abandoned in a roadway a few hours after the West St. Paul shooting on February 26. After obtaining a warrant, the investigator searched the Buick and found several relevant items: two spent bullet casings, multiple bail bond receipts bearing Garcia’s name, and a copy of the citation from the February 15 traffic stop bearing Garcia’s name. The investigator submitted the bullet casings from the Buick and the bullet fragment found in N.B.’s car for forensic analysis. The forensic analysis showed that the handgun found on Garcia after the Chisago County shooting fired both the bullet that was recovered from N.B.’s vehicle and one of the bullet casings found in the Buick. At the *Spreigl* hearing, no witness testified as to whether Garcia had been convicted of any crime related to the West St. Paul shooting.

Following the hearing, the district court issued a written order granting the state’s request to admit *Spreigl* evidence of the West St. Paul shooting but denying its request to present evidence regarding two other alleged incidents. The district court concluded, in relevant part, that the state had shown by clear and convincing evidence that Garcia

committed the West St. Paul shooting and that the evidence was admissible to show identity, intent, and common scheme or plan.

Garcia obtained new counsel and moved for reconsideration, arguing that N.B.'s in-court identification of Garcia violated his right to due process and that, without that identification, the state failed to show by clear and convincing evidence that Garcia committed the West St. Paul shooting. The district court issued a written order denying the motion.

Jury Trial and Sentencing

The case proceeded to a jury trial on the charges related to the Chisago County shooting. The jury heard testimony pertaining to the pending charges from several witnesses: the victim of the Chisago County shooting, three police officers who responded to the shooting, another officer who investigated that incident, a DNA scientist, a forensic scientist, and a research scientist who specializes in gunshot-residue analysis. As *Spreigl* evidence of the West St. Paul shooting, the state presented the testimony of N.B., the West St. Paul police investigator, and a second forensic scientist. Before each of the *Spreigl* witnesses began their testimony, the district court provided the pattern cautionary jury instruction concerning the admission of *Spreigl* evidence. The testimony of N.B. and the investigator was consistent with the testimony they gave at the *Spreigl* hearing. At trial, N.B. again identified Garcia as the driver of the Buick.

The jury found Garcia guilty on all three counts. The district court entered judgments of conviction for the drive-by-shooting and unlawful-firearm-possession counts.

The state sought an upward durational departure on the basis that Garcia meets the requirements of the dangerous-offender statute, Minn. Stat. § 609.1095, subd. 2. After a separate *Blakely* proceeding,² the jury found that Garcia is a “danger to public safety,” and the district court found that the other statutory requirements were met. The district court then sentenced Garcia to 120 months’ imprisonment for the drive-by-shooting conviction, an upward durational departure and the statutory maximum sentence. The district court imposed a concurrent 60-month sentence for unlawful possession of a firearm.

Garcia appeals.

DECISION

Garcia challenges his convictions and sentence. He argues that the district court abused its discretion by (1) admitting *Spreigl* evidence of his involvement in the West St. Paul shooting, (2) denying his request to modify the pattern cautionary jury instructions regarding that evidence, and, in the alternative, (3) imposing an aggravated sentence based on the dangerous-offender statute. We address each of Garcia’s arguments in turn.

I. The district court did not abuse its discretion by admitting *Spreigl* evidence of the West St. Paul shooting.

Garcia first argues that he is entitled to a new trial because the district court abused its discretion by admitting the evidence of the West St. Paul shooting. This court reviews

² To impose an upward durational departure from the Minnesota Sentencing Guidelines’ presumptive sentence, a district court generally must hold a proceeding in which a jury finds the facts authorizing the departure. *See Blakely v. Washington*, 542 U.S. 296, 303-04, 310 (2004) (noting exceptions where defendant stipulates to the relevant facts or consents to judicial factfinding regarding sentencing factors); *State v. Shattuck*, 704 N.W.2d 131, 140-42 (Minn. 2005).

a district court's decision to admit evidence of prior bad acts, or *Spreigl* evidence, for an abuse of discretion. *State v. Rossberg*, 851 N.W.2d 609, 615 (Minn. 2014). The defendant bears the burden of showing that an abuse of discretion occurred and that the defendant was prejudiced as a result. *Id.*

Evidence of a defendant's other bad acts is "not admissible to prove the character of [the] person in order to show action in conformity therewith." Minn. R. Evid. 404(b). But such evidence may be admitted for "other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.*; *State v. Fardan*, 773 N.W.2d 303, 315 (Minn. 2009). To admit *Spreigl* evidence, the following conditions must be satisfied:

- (1) the state must give notice of its intent to admit the evidence;
- (2) the state must clearly indicate what the evidence will be offered to prove;
- (3) there must be clear and convincing evidence that the defendant participated in the prior act;
- (4) the evidence must be relevant and material to the state's case; and
- (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Ness, 707 N.W.2d 676, 686 (Minn. 2006).

Here, Garcia focuses only on the clear-and-convincing-evidence factor. Specifically, he argues that this factor was not met because the state relied on N.B.'s in-court identification of him at the *Spreigl* hearing, which he contends violated his due-process rights because it was a first-time in-court identification under circumstances that were unnecessarily suggestive. He asserts that absent N.B.'s identification, the state failed to prove by clear and convincing evidence that he committed the West St. Paul shooting.

The clear-and-convincing-evidence standard necessary to admit *Spreigl* evidence requires the state to prove that “it is highly probable that the facts sought to be admitted are truthful.” *Ness*, 707 N.W.2d at 686. The standard requires “more than a preponderance of the evidence but less than proof beyond a reasonable doubt.” *State v. Jones*, 753 N.W.2d 677, 696 (Minn. 2008) (quotation omitted). Based on the evidence presented at the *Spreigl* hearing, we conclude that the district court properly determined that clear and convincing evidence demonstrated Garcia’s participation in the West St. Paul shooting. We reach this conclusion *even without* considering N.B.’s in-court identification, and we therefore do not reach Garcia’s due-process argument.

First, the evidence presented at the *Spreigl* hearing strongly connected Garcia to the Buick involved in the West St. Paul shooting. N.B. testified at the *Spreigl* hearing that, at the time of the shooting, she saw a black Buick that lacked license plates and had a “yellow paper” in the window. Following the shooting, police obtained a MNDOT video from a nearby intersection that showed a black Buick crossing the intersection approximately five minutes after the shooting. The Buick matched the physical description provided by N.B. and was heading in the direction N.B. described. Police also discovered that Garcia was involved in a traffic stop while driving a Buick in St. Paul just 11 days prior to the West St. Paul shooting. That Buick shared distinctive characteristics with the Buick described by N.B. and the Buick captured on the MNDOT video: it had no license plates, bore a temporary tag in the window, and had a silver band on the back, and its windows were darkly tinted. After the West St. Paul shooting, police located the Buick involved in the

St. Paul traffic stop using its VIN, searched the Buick, and found multiple documents inside bearing Garcia's name.

Second, forensic analysis showed that the handgun found on Garcia after the Chisago County shooting fired the bullet that was recovered from N.B.'s vehicle. That analysis also connected the handgun found on Garcia to one of the bullet casings found in the Buick. Third, the description provided by N.B. to police shortly after the West St. Paul shooting matched Garcia's general physical appearance. Based on this evidence from the *Spreigl* hearing, we conclude that the district court did not abuse its discretion by determining that the state had shown by clear and convincing evidence that Garcia committed the West St. Paul shooting.

Garcia contends that this evidence is insufficient because it fails to provide direct evidence that Garcia was the person who shot at N.B.'s car. Garcia further argues that, "[a]t the very least, without [N.B.'s] identification, the admission of the *Spreigl* evidence becomes a close call, which requires that the evidence be excluded." But the state can meet the clear-and-convincing-evidence standard with circumstantial evidence, *see State v. Dewald*, 464 N.W.2d 500, 503 (Minn. 1991), and the circumstantial evidence connecting Garcia to the West St. Paul shooting does not present a close call. The evidence presented at the *Spreigl* hearing, even without N.B.'s identification of Garcia, was sufficient to meet the clear-and-convincing-evidence standard. The district court did not abuse its discretion by admitting the evidence of the West St. Paul shooting as *Spreigl* evidence.

II. The district court did not abuse its discretion by denying Garcia’s request to modify the pattern cautionary jury instruction regarding *Spreigl* evidence.

Garcia next argues that he is entitled to a new trial because the district court abused its discretion by denying his request to modify the pattern jury instruction regarding the admission of *Spreigl* evidence. The refusal to provide a requested jury instruction lies within the discretion of the district court and will not be reversed absent an abuse of that discretion. *State v. Montano*, 956 N.W.2d 643, 649 (Minn. 2021).

Before trial, Garcia requested that the district court include language in the pattern cautionary jury instruction regarding *Spreigl* evidence informing the jury that Garcia had not been convicted of the West St. Paul shooting. Specifically, he requested that the district court instruct the jury as follows:

You are about to hear evidence of allegations *stemming from* February 26, 2019. This evidence is being offered for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the complaint. This evidence is not to be used to prove the character of the defendant or that defendant acted in conformity with such character. *In fact, the Defendant has not been convicted of the allegations you are about to hear. Remember, the Defendant has the presumption of innocence and it will be the State’s burden of proving Defendant’s guilt beyond a reasonable doubt in this matter and the allegations stemming from February 26, 2019 in a separate matter.*

The defendant is not being tried for and may not be convicted of any offenses other than the charged offenses. You are not to convict the defendant on the basis of these allegations *stemming from* February 26, 2019. To do so might result in unjust double punishment.

(Emphasis added.) At a pretrial hearing, Garcia’s attorney stated that it would be “more fair” to Garcia to instruct the jury as the defense requested because providing the pattern

Spreigl jury instruction would “make it sound like Mr. Garcia has already been convicted of that crime.” At a subsequent hearing, the district court denied Garcia’s request.

At trial, the district court provided the following pattern cautionary jury instruction for *Spreigl* evidence before each of the three *Spreigl* witnesses testified:

You are about to hear testimony, or be presented with evidence, regarding acts of the defendant which occurred on or about February 26, 2019, in the City of West St. Paul, Minnesota.

This evidence is offered for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the complaint. This evidence is not to be used to prove the character of the defendant or that Defendant acted in conformity with such character.

The defendant is not being tried for, and may not be convicted of, any offense other than the charged offenses. You’re not to convict the defendant on the bases of the occurrences of February 26, 2019, in West St. Paul. To do so might result in unjust double punishment.

See 10 Minnesota Practice, CRIMJIG 2.01 (Supp. 2021).

On appeal, Garcia argues that the district court’s cautionary instruction “was confusing and misled the jury into believing Garcia had been found guilty of the West St. Paul conduct.” In particular, Garcia takes issue with the district court’s use of the phrases “acts of the defendant” and “double punishment.” He contends that those phrases “told the jury that Garcia committed the acts” and “that Garcia was already being punished for the West St. Paul conduct.” He asserts that, without his “requested language clarifying that these were ‘allegations’ for which the ‘Defendant has not been convicted’ and that he maintained his presumption of innocence regarding the West St. Paul events, the jury was

left with the unfairly prejudicial impression that Garcia was guilty of the West St. Paul shooting.”

A district court has “considerable latitude” in selecting the language for jury instructions. *Montano*, 956 N.W.2d at 649 (quotation omitted). But jury instructions are erroneous if they “confuse, mislead, or materially misstate the law.” *State v. Fox*, 868 N.W.2d 206, 222 (Minn. 2015). This court reviews jury instructions “in their entirety to determine whether they fairly and adequately explain the law.” *State v. Moore*, 846 N.W.2d 83, 90 (Minn. 2014).

The pattern jury instruction provided by the district court did not confuse or mislead the jury or materially misstate the law. Among the factors for admitting *Spreigl* evidence is the requirement that the district court find, by clear and convincing evidence, that the defendant participated in the prior bad act. *Ness*, 707 N.W.2d at 686. The district court’s cautionary instruction was consistent with that standard, including its directions that the *Spreigl* evidence related to “acts of the defendant” and that “convict[ing] the defendant on the bases of the occurrences of February 26, 2019, in West St. Paul . . . might result in unjust double punishment.” Neither of these statements stated or implied that Garcia had already been found guilty of that prior conduct beyond a reasonable doubt. Read in its entirety, the instruction appropriately directed the jury as to the limited purpose of admitting the *Spreigl* evidence and cautioned the jury not to consider the evidence for an improper purpose. Because the district court’s cautionary instruction fairly and adequately explained the law applicable to this case, we conclude that the district court did not abuse its discretion by denying Garcia’s request to modify the pattern jury instruction.

III. The district court did not abuse its discretion by sentencing Garcia to an upward departure on the basis that he is a dangerous offender.

In the alternative, Garcia argues that he is entitled to reversal of his sentence for drive-by shooting because the district court abused its discretion by imposing a sentence that represented an upward durational departure. The presumptive sentence range for this offense, considering Garcia’s criminal-history score of three, was 67 to 93 months. The district court imposed a 120-month sentence, which constituted the statutory maximum sentence. *See* Minn. Stat. § 609.66, subd. 1e(b) (providing a maximum sentence of ten years for a person convicted of drive-by shooting at an occupied motor vehicle). We “review a district court’s decision to depart from the presumptive guidelines sentence for an abuse of discretion.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A district court abuses its discretion if its reasons for departure are legally impermissible or there is insufficient evidence in the record to justify the departure. *Id.*

The district court imposed an upward durational departure at the state’s request on the basis that Garcia met the requirements of the dangerous-offender statute, Minn. Stat. § 609.1095, subd. 2. That statute authorizes a district court to impose up to the statutory maximum for an offender convicted of a felony violent crime if: (1) the offender was at least 18 years old at the time the crime was committed; (2) the offender has two or more prior convictions for violent crimes; and (3) the fact-finder determines that the offender is a “danger to public safety.” Minn. Stat. § 609.1095, subd. 2; *Neal v. State*, 658 N.W.2d 536, 543 (Minn. 2003).

Following the jury trial, the district court held a separate *Blakely* proceeding before the jury on the state’s request for an upward departure based on this statute. The district court instructed the jury that the state had the burden to prove beyond a reasonable doubt that Garcia is a dangerous offender within the meaning of the statute. Garcia stipulated that he was over 18 at the time of the Chisago County shooting. The state then presented evidence of two prior offenses: a second-degree-assault conviction resulting from an incident in Ramsey County in 2012 and a third-degree-assault conviction resulting from an incident in Dakota County in 2017. The district court instructed the jury that, in deciding whether the state met its burden, the jury could also consider the evidence presented during trial. In other words, the jury could consider the West St. Paul shooting evidence. Following the proceeding, the jury returned a special-verdict form finding that Garcia is a “danger to public safety.” At the sentencing hearing, the district court determined that all requirements of the dangerous-offender statute were met and supported an upward durational departure. Over Garcia’s objection, the district court imposed a 120-month sentence for the drive-by-shooting conviction.

On appeal, Garcia does not dispute that the first two statutory factors were met—(1) he was over 18 years old at the time the violent felony was committed and (2) he has two prior convictions that qualify as violent crimes. Instead, Garcia’s argument is limited to the third factor—that he is a “danger to public safety.” He contends that the evidence was insufficient to support the jury’s finding that he is a danger to public safety. As both parties acknowledge, we review a sentencing jury’s findings for sufficiency of the evidence. *State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008). In conducting that review,

we engage in a painstaking examination of the record to determine whether a fact-finder could reasonably find the facts necessary to depart. *See State v. Barshaw*, 879 N.W.2d 356, 362 (Minn. 2016). We view the evidence in the light most favorable to the jury’s finding. *See State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020).

When determining whether an offender is “a danger to public safety,” the fact-finder may consider, in relevant part, “the offender’s past criminal behavior, such as the offender’s high frequency rate of criminal activity or juvenile adjudications, or long involvement in criminal activity including juvenile adjudications.” Minn. Stat. § 609.1095, subd. 2(2)(i). For the following reasons, we conclude that the evidence presented to the jury was sufficient to support its finding that Garcia is a danger to public safety.

During the trial and the *Blakely* proceeding, the jury heard evidence of the following prior criminal activities of Garcia: (1) the West St. Paul shooting in 2019, which had not resulted in a conviction;³ (2) a third-degree-assault conviction resulting from an incident in Dakota County in 2017 in which Garcia and another individual broke into a person’s house, broke the victim’s nose, and knocked out one of the victim’s teeth; and (3) a second-degree-assault conviction resulting from an incident in Ramsey County in 2012 in which Garcia pointed a gun at a person at a motel and then fired shots into the air outside. This evidence demonstrated that Garcia engaged in three prior incidents of violent, criminal activity over the course of approximately nine years. Viewed in the light most favorable

³ On appeal, Garcia does not dispute that the evidence of the West St. Paul shooting was properly considered by the jury as evidence of criminal activity in determining whether he is a danger to public safety.

to the jury's finding, this evidence supports a determination that Garcia engaged in a high frequency rate of criminal activity, which in turn supports the finding that Garcia is a danger to public safety. We also note that the last incident, the West St. Paul shooting, presents a serious public safety concern because it involved a random shooting.

For these reasons, we conclude that the evidence is sufficient to support the jury's finding that Garcia is a danger to public safety. The district court therefore did not abuse its discretion by determining that the requirements of the dangerous-offender statute were satisfied and imposing the statutory maximum sentence of 120 months for Garcia's drive-by shooting conviction.

Conclusion

In sum, we conclude that the district court did not abuse its discretion by admitting evidence of Garcia's involvement in the West St. Paul shooting, instructing the jury with respect to the admission of that evidence, or imposing an upward durational departure on the basis that Garcia is a dangerous offender.

Affirmed.