STATE OF MINNESOTA

IN SUPREME COURT

A22-0229

Saint Louis County Hudson, J.

State of Minnesota,

Respondent,

vs. Filed: March 1, 2023
Office of Appellate Courts

Jerome Dionte Spann,

Appellant.

Keith Ellison, Attorney General, Lisa Lodin Peralta, Assistant Attorney General, Saint Paul, Minnesota; and

Kimberly J. Maki, Saint Louis County Attorney, Duluth, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Jenna Yauch-Erickson, Assistant State Public Defenders, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. The district court did not violate the accomplice-corroboration statute, Minn. Stat. § 634.04 (2022), in finding defendant guilty of first-degree premeditated murder when the record does not support a finding that the witnesses played a knowing role in the crime.

2. The district court did not abuse its discretion in excluding impeachment evidence proffered by defendant when the evidence was not probative of untruthfulness.

3. The district court erred by relying on the doctrine of transferred intent to find defendant guilty of second-degree assault-fear, and that error was not harmless beyond a reasonable doubt.

Affirmed in part, reversed in part, and remanded.

O P I N I O N

HUDSON, Justice.

Following a bench trial, appellant Jerome Dionte Spann was convicted of first-degree premeditated murder and second-degree assault-fear. Spann raises three issues on direct appeal. First, Spann argues that the district court violated the accomplice-corroboration statute, Minn. Stat. § 634.04 (2022), when it found that he committed the murder with premeditation. Second, Spann contends that the district court erroneously excluded evidence he proffered to impeach one of the State's witnesses. Finally, Spann argues that the district court erred by relying on the doctrine of transferred intent to find him guilty of second-degree assault-fear. We affirm Spann's conviction of first-degree premeditated murder because the district court did not violate the accomplice-corroboration statute or abuse its discretion in excluding the proffered evidence. But we reverse Spann's second-degree assault-fear conviction because the district court committed reversible error when it relied on the doctrine of transferred intent, and we remand to the district court for further proceedings consistent with this opinion.

FACTS

On the evening of December 25, 2018, K.K. and his romantic partner were driving through Hibbing when they saw appellant Jerome Dionte Spann walking on the side of the road. K.K. had met Spann approximately 6 weeks earlier, and K.K.'s partner had never met Spann. K.K. directed his partner, who was driving, to stop for Spann, whom he said was a friend. When Spann asked for a ride to his nearby car, they agreed because it was a cold winter evening. They did not see a gun on Spann while inside the vehicle.

Spann directed them to a house approximately four blocks away, where a group of people were gathered outside. At Spann's direction, K.K.'s partner parked the vehicle. Spann and K.K. got out of the vehicle and started walking toward the group, which included the following four people: Jeryel "Jason" McBeth, McBeth's romantic partner, J.S., and J.S.'s brother. K.K.'s partner also stepped out of the car to see what was going on with the group. When Spann reached the group, he said, "What's up now, Jason [McBeth]?," pulled a gun out of his waistband, and fired five gunshots. Three shots struck McBeth, two in the chest and one in the arm. One shot also grazed J.S. Spann then chased the group, aiming the gun like he was going to continue to fire. Spann, however, did not fire any more shots and instead ran back to the vehicle. K.K. and K.K.'s partner also got back into the vehicle.

At Spann's direction, K.K.'s partner then drove to a nearby apartment complex. When Spann went inside the apartment complex, K.K. asked his partner to wait. After K.K. and his partner had waited for approximately 5 minutes, Spann returned to the vehicle and asked K.K.'s partner to drive him to the Twin Cities to "get away." When she refused, Spann requested a ride to another building in Hibbing. K.K.'s partner agreed. After K.K.

and K.K.'s partner dropped Spann off at the other building, they never saw Spann again. Neither called 911.

Back at the scene of the shooting, McBeth's partner called 911 seconds after the shooting and identified Spann as the shooter. McBeth was transported to a local hospital, where he was pronounced dead on arrival. Spann was later apprehended.

The State initially charged Spann with second-degree intentional murder for McBeth's killing, Minn. Stat. § 609.19, subd. 1(1) (2022), and second-degree assault with a dangerous weapon, Minn. Stat. § 609.222, subd. 1 (2022), in relation to J.S.'s brother (who was an unharmed bystander in the group).[1] However, the State did *not* charge Spann with any offenses in relation to J.S. (who was grazed by a bullet). A Saint Louis County grand jury later indicted Spann for the first-degree premeditated murder of McBeth under Minn. Stat. § 609.185(a)(1) (2022).

Before trial, Spann made two motions relevant to this appeal. First, Spann moved to invalidate the grand jury indictment, arguing that K.K. and K.K.'s partner played a knowing role in the crime and therefore the grand jury should have received an instruction on Minn. Stat. § 634.04. This statute provides that "[a] conviction cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to

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[1] The Legislature has defined two distinct forms of assault. The first form of assault is assault-harm, which a person commits through "the intentional infliction of . . . bodily harm upon another." Minn. Stat. § 609.02, subd. 10(2) (2022). The second form of assault is assault-fear, which a person commits through "an act done with intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.02, subd. 10(1) (2022). As we have explained, assault-harm is a general intent crime, while assault-fear is a specific intent crime. *State v. Fleck*, 810 N.W.2d 303, 309–10 (Minn. 2012).

convict the defendant of the commission of the offense . . . ." The district court denied Spann's motion, stating that any failure to give the instruction was not "so egregiously misleading or deficient that the fundamental integrity of the indictment process itself was compromised."

Second, Spann moved to impeach K.K. with guilty pleas (as opposed to convictions) that K.K. entered in 2021 in connection with firearm offenses that allegedly occurred in November 2020.[2] According to Spann, the guilty pleas showed that K.K. lied during a 2018 police interview following McBeth's killing when K.K. said that he "never has guns."[3] Because convictions had not yet been entered for those charges, Spann relied on Minn. R. Evid. 608(b), rather than Minn. R. Evid. 609.[4] The district court denied Spann's motion, stating that it was "unpersuaded that an incident allegedly occurring in November of 2020 is probative as to the truthfulness of [K.K.]'s statement made two years prior."

Spann waived his right to a jury trial and submitted his case to the district court. During the trial, the State presented testimony from 19 witnesses, including K.K., K.K.'s

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[2] The offenses were multiple counts of ineligible firearm possession and firearm theft.

[3] The district court noted that no evidence was provided regarding the exact date on which K.K.'s statement to police following McBeth's killing was made. However, the district court noted that based on the representations of counsel, K.K. made the statement approximately 2 years before he was charged with the firearm offenses in November 2020. We therefore understand the police statement to have been made in 2018.

[4] Under Minn. R. Evid. 608(b), a witness may be impeached by inquiring on cross-examination into specific instances of the conduct of the witness that are probative of the witness's character for truthfulness or untruthfulness. Under Minn. R. Evid. 609, a witness may be impeached with evidence of the witness's prior criminal convictions.

partner, and J.S.'s brother. After considering the evidence presented above, the district court found Spann guilty as charged.

Relevant to this appeal, in explaining its verdict for second-degree assault-fear, the district court observed that although the State's written closing argument referred to a second-degree assault charge for J.S. (whom Spann grazed during his shooting), the State had not alleged a charge of second-degree assault related to J.S. Rather, the complaint only charged Spann with second-degree assault against J.S.'s brother (who was an unharmed bystander in the group). In finding Spann guilty of second-degree assault-fear against J.S.'s brother, the district court cited the testimony of J.S.'s brother that he saw Spann approaching the group with a firearm, he saw Spann shoot McBeth, and that Spann "kind of chased us a little bit, and then he aimed a little like he was going to continue to fire." The district court then included a footnote that states, without any further elaboration, "The Court is using the doctrine of transferred intent for the reasons set out in the First-Degree Murder analysis to conclude that [Spann] acted with the requisite intent beyond a reasonable doubt." The only reference to transferred intent in the district court's first-degree murder analysis is a footnote that quotes verbatim the model jury instruction for transferred intent.

The district court sentenced Spann to life in prison without the possibility of release for the first-degree murder conviction and 36 months in prison for the second-degree assault-fear conviction, to run concurrent with the life sentence. Spann appeals.

ANALYSIS

Spann advances three challenges to his convictions for first-degree premeditated murder and second-degree assault-fear. We address each in turn.

I.

Spann first asserts that K.K. and K.K.'s partner played a knowing role in the crime and that their trial testimony was not corroborated by any other evidence. Consequently, Spann argues that the district court violated the accomplice-corroboration statute, Minn. Stat. § 634.04, when it found that he committed the murder with premeditation.[5]

Under Minn. Stat. § 634.04, a defendant may not be convicted based "upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense . . . ." This statutory requirement "embodies the common law's long-standing mistrust of the testimony of the accomplice," for an accomplice "may testify against another in the hope of or upon a promise of immunity or clemency or to satisfy other self-serving or malicious motives." *State v. Shoop*, 441 N.W.2d 475, 479 (Minn. 1989).

A witness is considered an accomplice when "the witness could have been indicted and convicted for the crime with which the defendant is charged." *State v. Pendleton*, 759 N.W.2d 900, 907 (Minn. 2009) (citation omitted) (internal quotation marks omitted). This definition includes someone who "intentionally aids, advises, hires, counsels, or

[5] The State has asked us to strike three sentences in its brief that describe evidence of Spann's premeditation that the district court excluded at trial and did not consider in reaching its verdict. We grant the State's request. *See State v. Chavez-Nelson,* 882 N.W.2d 579, 584 n.2 (Minn. 2016) (striking information in a brief outside the record).

conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2022). However, "the witness must have played a knowing role in the crime." *Pendleton*, 759 N.W.2d at 907. A witness's "mere presence at the scene, inaction, knowledge and passive acquiescence" is not enough. *State v. Palubicki*, 700 N.W.2d 476, 487 (Minn. 2005) (citation omitted) (internal quotation marks omitted). Additionally, an "accessory after the fact is not an accomplice." *State v. Swanson*, 707 N.W.2d 645, 652 (Minn. 2006).

Applying this well-established law to the facts presented here, we conclude that, as a matter of law, K.K. and K.K.'s partner were not accomplices because they did not play a "knowing role" in the crime. *Palubicki*, 700 N.W.2d at 487. The record establishes the following facts: K.K. and K.K.'s partner were driving through Hibbing when they saw Spann walking on the side of the road. K.K.'s partner had never met Spann, and K.K. had only known Spann for about 6 weeks. When Spann asked for a ride to his nearby car, they agreed because it was a cold winter evening. They did not see a gun before the shooting. Spann directed them to a house approximately four blocks away, where a group of people were gathered outside. Spann and K.K. got out of the vehicle and started walking toward the group. K.K.'s partner stepped out of the car to see what was going on with the group. When Spann reached the group, he said, "What's up now, Jason [McBeth]?," pulled a gun out of his waistband, and fired five gunshots.

At most, the above-described facts establish that K.K. and K.K.'s partner played an unknowing role when they drove Spann four blocks to his car and demonstrated "passive acquiescence" as Spann fired the five gunshots.[6] *Id.*

We discern significant parallels between this case and *State v. Jackson*, 746 N.W.2d 894 (Minn. 2008). In *Jackson*, the witnesses were passengers in a vehicle with the defendant when the defendant shot and killed a pedestrian. *Id.* at 895–96. Although the record suggested that the witnesses "may have known that [the defendant] intended to fight [the victim]," there was no evidence "that they knew [the defendant] intended to kill [the victim]." *Id.* at 898. Therefore, we determined that the "mere presence of [the witnesses] with [the defendant] before, during, and after the shooting [did] not render them his accomplices." *Id.* at 899. In this case, there was no evidence that K.K. and K.K.'s partner knew that Spann would fight McBeth, kill McBeth, or commit any crime at all. Like the witnesses in *Jackson*, the "mere presence" of K.K. and K.K.'s partner with Spann "before, during, and after the shooting" does not transform them into accomplices.[7] *Id.*

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[6] Spann points out that a witness's "conduct before and after an offense are relevant circumstances" in determining whether that witness is an accomplice. *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995). Although this assertion is true, we have rejected the notion that a witness's after-the-fact assistance, standing alone, transforms that witness into an accomplice. *See State v. Ulvinen*, 313 N.W.2d 425, 428 (Minn. 1981); *see also Swanson*, 707 N.W.2d at 652 ("An accessory after the fact is not an accomplice."). Consequently, the post-shooting conduct of K.K. and K.K.'s partner is insufficient, by itself, to support Spann's argument that they were his accomplices.

[7] Spann contends that our analysis in *Shoop* controls our analysis of this case and that therefore we must ask whether a "witness against the defendant might reasonably be considered an accomplice to the crime." 441 N.W.2d at 479. But given our conclusion

We conclude that, as a matter of law, K.K. and K.K.'s partner were not accomplices. *See Palubicki*, 700 N.W.2d at 487–88. Therefore, the district court did not violate section 634.04 by relying on their testimony to find that the element of premeditation was satisfied without first determining that their testimony was sufficiently corroborated.[8]

II.

We turn next to Spann's argument that the district court erroneously excluded evidence that he proffered to impeach K.K. "Evidentiary rulings rest within the sound discretion of the district court" and will not be reversed "absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

Spann sought to impeach K.K. under Minnesota Rule of Evidence 608(b).[9] That rule provides:

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that this case is comparable to *Jackson*—a case in which we quoted and applied the *Shoop* standard—we conclude that Spann's challenge would also fail under the *Shoop* standard.

[8] Spann also argues that to ensure compliance with section 634.04 in bench trials, district courts should be required to make an express determination that a witness is, or is not, an accomplice and, if so, whether that witness's testimony is sufficiently corroborated. But because we hold that section 634.04 was not violated here, we need not reach this issue.

[9] As a threshold matter, the State argues that Spann failed to provide an adequate factual basis for his intent to impeach, leaving the record insufficient for us to review his impeachment challenge. A party preserves an evidentiary challenge for review by means of "an offer of proof showing the nature of the evidence excluded so that courts on appeal [can] determine if it was error to exclude the evidence and whether the error, if any, was prejudicial." *State v. Lee*, 494 N.W.2d 475, 479 (Minn. 1992). Here, the record, through Spann's notice of intent to impeach and his counsel's oral representations, clearly shows

> Specific instances of the conduct of the witness, for the purpose of attacking or supporting the witness' character for truthfulness, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness . . . .

Minn. R. Evid. 608(b). Specific instances of conduct are probative of untruthfulness if they involve an untruth on the part of the witness. *See State v. Haynes*, 725 N.W.2d 524, 530–31 (Minn. 2007).

Spann contends that K.K.'s 2021 guilty pleas to 2020 charges for ineligible firearm possession and firearm theft were probative of untruthfulness because the pleas contradict K.K.'s 2018 statement to police in this case that he "doesn't have anything to do with guns" and "never has guns."[10] The State argues that a guilty plea without a conviction is not the same thing as an admission to a crime. But even assuming *arguendo* that K.K.'s 2021 guilty pleas to the 2020 charges are tantamount to an admission that he possessed a firearm, such an admission does not contradict K.K.'s 2018 statement.

At a minimum, impeachment evidence under Minn. R. Evid. 608(b) must involve an untruth on the part of the witness. *See Haynes*, 725 N.W.2d at 530–31. Before the

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the nature of the evidence that Spann complains was improperly excluded. Tellingly, the district court denied Spann's motion to impeach on the merits, not because of an inadequate offer of proof. Therefore, Spann's evidentiary challenge is adequately preserved for review.

[10] Spann also argues that evidence of K.K.'s guilty plea to firearm theft was probative of his credibility because the act of theft itself is probative of untruthfulness. But Spann did not raise this argument before the district court, and the district court did not consider it. Therefore, we consider the argument forfeited. *See Steward v. State*, 950 N.W.2d 750, 756–57 (Minn. 2020).

district court, Spann only offered evidence that (1) in 2018, K.K. told police he "never has guns," (2) in 2020, he was charged with ineligible firearm possession, and (3) in 2021, he pleaded guilty to ineligible firearm possession.[11] From this evidence, it is entirely possible to infer that K.K. did not possess a firearm in 2018, first began possessing a firearm in 2019, and was caught in 2020. Under this series of events, K.K.'s 2018 statement to police would have been truthful. Thus, Spann cannot demonstrate that K.K.'s guilty pleas met the threshold requirement that impeachment evidence involve an untruth. *See Haynes*, 725 N.W.2d at 530–31.

Spann contends that the district court abused its discretion when it focused on the time lapse between K.K.'s 2018 police statement and the 2020 firearm charges. But Spann misunderstands the district court's basis for excluding the evidence. The district court found that the evidence was not probative of untruthfulness not because it became stale, but rather because Spann could not show that K.K.'s statement was untruthful in the first place. The district court therefore did not act "against logic and the facts in the record" when it excluded evidence that did not meet the threshold requirement for impeachment evidence under Minn. R. Evid. 608(b). *Guzman*, 892 N.W.2d at 810.

[11] The State asks us to strike portions of Spann's brief discussing information outside the record: namely, the 2020 criminal complaint against K.K. regarding the firearm charges. We grant that motion and do not rely on that information in reaching our decision. *See State v. Burrell*, 837 N.W.2d 459, 462 n.1 (Minn. 2013); *Holt v. State*, 772 N.W.2d 470, 481 n.5 (Minn. 2009).

III.

We finally consider Spann's contention that the district court committed reversible error by relying on the doctrine of transferred intent to find him guilty of second-degree assault-fear against J.S.'s brother.

A.

In criminal law, the doctrine of transferred intent "allows evidence of an intent to harm 'someone' to transfer to the person actually harmed when there is a possibility the victim was not the intended recipient of the specific act." *State v. Cruz-Ramirez*, 771 N.W.2d 497, 507 (Minn. 2009). The doctrine is most frequently applied in cases "where the accused intends to kill one person, but, because of bad aim, kills another." *State v. Hough*, 585 N.W.2d 393, 395 n.1 (Minn. 1998). We have applied the transferred intent doctrine in accordance with that description. *See State v. Caldwell*, 803 N.W.2d 373, 380–81, 390 (Minn. 2011) (intent to murder a targeted victim transferred to the murder of the wrong target); *Cruz-Ramirez*, 771 N.W.2d at 501–02, 507 (intent to murder one victim transferred to the murder of a bystander who was shot and killed); *State v. Ford*, 539 N.W.2d 214, 219, 229 (Minn. 1995) (intent to murder one victim transferred to the attempted murder of a bystander who was accidentally shot and wounded); *State v. Merrill*, 450 N.W.2d 318, 320, 323 (Minn. 1990) (intent to murder a pregnant woman transferred to her fetus); *State v. Sutherlin*, 396 N.W.2d 238, 239–40 (Minn. 1986) (intent to murder one victim transferred to the murder of a bystander who was accidentally shot and killed).

The doctrine, however, has certain limitations. In *Merrill*, we explained that for intent to transfer from one crime to another, the intended harms of the crimes must be of

the "same type." 450 N.W.2d at 323. For example, we noted in *Merrill* that "an intent to murder cannot substitute for the intent required to convict for the malicious destruction of property that may have inadvertently been damaged during the murderous assault." *Id.*

Just as murder and malicious destruction of property involve different types of intended harms, so too do murder and assault-fear. The intended harm of assault-fear is the specific "intent to cause fear." *See Fleck*, 810 N.W.2d at 308–09. On the other hand, the intended harm of first-degree premeditated murder is the intent to cause death. *See Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016). Fear and death are two very different intended harms: the former involves intending to cause an unpleasant mental stimulus, while the latter involves intending to inflict a fatal physical injury. *Cf. State v. Johnson*, 72 P.3d 343, 350 (Ariz. Ct. App. 2003) (declining to transfer intent from assault-harm to assault-fear for similar reasons). Indeed, we have only approved of transferring intent between crimes involving intended physical harm, and more specifically, between crimes involving the intent to cause death. The dearth of case law dealing with transferring intent between murder and assault-fear bolsters our conclusion that the intent to cause fear and the intent to cause death involve two different types of intended harm.

Moreover, we do not believe that the policy rationale for the transferred intent doctrine would be vindicated by applying the doctrine here. At base, the policy rationale underpinning the doctrine is that the accused should not escape punishment if, because of "accident or mistake," he commits a crime against the wrong person. *State v. Hall*, 722 N.W.2d 472, 481–82 (Minn. 2006); *see also* Nancy Ehrenreich, *Attempt, Merger, and Transferred Intent*, 82 Brook. L. Rev. 49, 56–57 (2016).

Unlike our decisions in *Caldwell*, *Cruz-Ramirez*, *Ford*, *Merrill*, *Sutherlin*, and *Caldwell*, this case does not involve a defendant who committed a crime against the wrong victim due to accident or mistake and therefore might escape punishment. Rather, Spann killed his intended victim, and he was held accountable for his actions through his first-degree murder conviction. J.S.'s brother was an unharmed bystander during the shooting, and his fear of immediate bodily harm or death was not an "accident or mistake" stemming from Spann's murder of McBeth. *Hall*, 722 N.W.2d at 482.

In sum, we conclude that the district court erred in applying the doctrine of transferred intent to find Spann guilty of second-degree assault-fear.

B.

We must next consider whether the district court's error was "harmless beyond a reasonable doubt." *State v. Schoenrock*, 899 N.W.2d 462, 466 (Minn. 2017). In conducting harmless-error review, we "must look to the basis on which the [fact-finder] rested its verdict and determine what effect the error had on the actual verdict." *State v. McInnis*, 962 N.W.2d 874, 886 (Minn. 2021) (citation omitted) (internal quotation marks omitted). For an error to be harmless beyond a reasonable doubt, the verdict must be "surely unattributable" to the error. *State v. Davis*, 820 N.W.2d 525, 533 (Minn. 2012) (citation omitted) (internal quotation marks omitted).

The State is correct that the record contains evidence supporting an inference that Spann intended to cause J.S.'s brother to fear immediate bodily harm when Spann chased him and aimed his gun like he was going to continue to fire. But in finding Spann guilty of second-degree assault-fear, the district court explicitly stated that it was "using the

doctrine of transferred intent . . . to conclude that [Spann] acted with the requisite intent beyond a reasonable doubt." Given that the district court expressly stated that the basis for its finding of Spann's intent was its erroneous application of the transferred intent doctrine, we cannot conclude that the verdict was "surely unattributable" to the district court's error. *See Davis*, 820 N.W.2d at 533; *see also Hall*, 722 N.W.2d at 479 (concluding that an erroneous transferred intent instruction was not harmless because, although there was independent evidence of the defendant's intent in the record, we could not say beyond a reasonable doubt that the defendant would have been convicted without the erroneous instruction).

C.

Having concluded that the district court's error was not harmless, our final inquiry centers on the proper remedy. In previous decisions when the district court has misapplied the intent element in a bench trial, we have reversed the conviction and remanded to the district court to reconsider its verdict on the existing record. *See State v. Al-Naseer*, 734 N.W.2d 679, 689 (Minn. 2007); *State v. Mauer*, 741 N.W.2d 107, 116 (Minn. 2007). Spann distinguishes those cases by arguing that in *Al-Naseer* and *Mauer*, the district courts correctly applied existing law that we modified on appeal, but that in this case, the district court misapplied well-established law. Based on this purported distinction, Spann argues that an outright reversal is the appropriate remedy here.

We are not convinced. When a district court misapplies well-established law in a bench trial, it is as if the district court instructed itself incorrectly on the law. *See Wilson v. United States*, 250 F.2d 312, 324 (9th Cir. 1957) (noting that there is no meaningful

distinction between a trial court "formally instructing the jury as to what [it] thinks the applicable law to be and in effect instructing [itself] similarly" in a bench trial); *State v. Blazak*, 462 P.2d 84, 86 (Ariz. 1969) (explaining that the district court's misstatement of the law during a bench trial is "analogous to a jury trial wherein the judge has improperly declared the law in the instruction to the jury"); *State v. Zamora-Skaar*, 480 P.3d 1034, 1044 (Or. Ct. App. 2020) (explaining that a trial court applying an incorrect legal standard in a bench trial "is akin to . . . a trial court deliver[ing] an incorrect jury instruction"). And when a district court improperly instructs a jury—as the district court did in *Hall* on the transferred intent doctrine—our practice is to reverse the conviction and remand for further proceedings consistent with our opinion. *See Hall*, 722 N.W.2d at 479; *see also State v. Koppi*, 798 N.W.2d 358, 367 (Minn. 2011). Therefore, we believe the proper remedy is to reverse Spann's assault-fear conviction and remand to the district court to reconsider its verdict on that count on the existing record.

CONCLUSION

For the foregoing reasons, we affirm the conviction of first-degree murder, reverse the conviction of second-degree assault-fear, and remand to the district court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.