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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0456**

State of Minnesota,
Respondent,

vs.

Victor Wayne Lynch,
Appellant.

**Filed April 29, 2019
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Ramsey County District Court
File No. 62-CR-17-896

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and John P. Smith, Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JOHNSON, Judge

A Ramsey County jury found Victor Wayne Lynch guilty of five offenses, including third-degree murder and second-degree manslaughter, based on evidence that he caused a woman's death by injecting a mixture of heroin and methamphetamine into her arm. On appeal, Lynch raises multiple issues. We conclude that the district court did not err by admitting evidence of prior incidents in which Lynch injected illegal drugs into others. We also conclude that the state's principal witness, a friend of the deceased woman who was present with her and Lynch when Lynch administered the fatal injection and who injected herself with the same drug mixture, was not an accomplice of Lynch, which means that the district court did not err by not instructing the jury on accomplice testimony and that the evidence supporting Lynch's convictions is not insufficient for lack of corroboration. We further conclude that Lynch is not entitled to a new trial on the ground that the prosecutor and the state's witnesses referred to the deceased woman as a "victim" on five occasions. But we conclude that the district court erred by convicting Lynch of four offenses that are included in third-degree murder. Therefore, we affirm in part, reverse in part, and remand for resentencing.

FACTS

On October 10, 2016, Roseville police officers and paramedics responded to a report that a woman at a motel was unconscious. When first responders arrived, they found a 28-year-old woman, later identified as T.M., in Lynch's motel room. Another woman, S.M., was attempting to administer CPR to T.M. Suspecting a drug overdose, first responders

attempted to revive T.M. by administering Narcan. Paramedics transported T.M. to a hospital, where she later died. The medical examiner determined that the cause of T.M.'s death was mixed-drug toxicity based on the presence of heroin, methamphetamine, and fentanyl in her body.

Police officers brought Lynch and S.M. to the police station for separate interviews. Both Lynch and S.M. initially stated that they had not taken any drugs and were not aware that T.M. had taken any drugs. Three days later, S.M. voluntarily returned to the police station and provided a second statement in which she said that Lynch had injected drugs into T.M.'s arm.

In February 2017, the state charged Lynch with two counts of third-degree murder, in violation of Minn. Stat. § 609.195(b) (2016). Shortly thereafter, Lynch gave a second statement to police officers, which differed from his earlier statement. In his second statement, Lynch admitted that he used drugs with the two women, that he put a tourniquet on T.M.'s arm, and that he engaged in sexual activity with the women. But Lynch stated that T.M. brought both the heroin and the methamphetamine to the motel room, that T.M. mixed the drugs herself, and that T.M. injected the drugs into her own arm. Lynch stated that S.M. was present and engaged in drug use and sexual activity; he did not indicate whether S.M. assisted T.M. in her use of drugs. Lynch also stated that, in the past, he had helped other women by injecting them with drugs when they had difficulty doing so themselves.

In April 2017, the state amended the complaint by adding one count of second-degree manslaughter, in violation of Minn. Stat. § 609.205, subd. 1 (2016). In August

2017, the state again amended the complaint by adding two counts of fifth-degree drug possession (one count for heroin and one count for methamphetamine), in violation of Minn. Stat. § 152.025, subd. 2(1) (2016).

In July and October 2017, the state gave notice of its intent to introduce evidence of prior acts by Lynch. In October 2017, Lynch gave notice that he intended to pursue an alternative-perpetrator defense and to introduce reverse-*Spreigl* evidence concerning S.M. On the first day of trial, the state amended counts 1, 2, and 3 of the complaint by adding allegations that Lynch aided and abetted the crime of another.

The case was tried to a jury on nine days in October and November 2017. The state called 11 witnesses, including S.M., T.M.'s mother, police officers, medical providers, and a medical examiner. The state also introduced numerous exhibits, including an audio-recording of a 911 call and a redacted audio-recording of Lynch's second statement to police officers.

After receiving immunity from prosecution, S.M. testified for the state, as follows. She and T.M. went to Lynch's motel room on October 9 so that T.M. could talk to him. As the evening progressed, Lynch suggested that they use drugs together, and he mixed his heroin with T.M.'s methamphetamine to make "speedballs" and drew three syringes, one for each of them. S.M. had seen T.M. use methamphetamine in the past but had not seen her use heroin. Lynch put a tourniquet on T.M.'s arm and injected T.M. with the heroin-methamphetamine mixture. Lynch offered to also inject S.M., but S.M. declined and injected herself with a smaller amount of the mixture. S.M., Lynch, and T.M. engaged in sexual activity with each other before falling asleep.

The next morning, Lynch left the motel room to meet his son while the two women remained in the room. S.M. watched television all day while T.M. slept. Lynch returned to the motel room at approximately 6:00 or 7:00 p.m. A short time later, S.M. became concerned about T.M. because she would not wake up to eat. When T.M. appeared to have a seizure, S.M. called 911.

The district court allowed the state to introduce evidence that, on prior occasions, Lynch had injected drugs into others. This evidence was in two forms. First, the district court admitted excerpts from Lynch's second statement to police officers, in which he said that he had, in the past, assisted various women who had difficulty injecting themselves with drugs by injecting the drugs for them. Second, the state called D.B., who was T.M.'s boyfriend, who testified that Lynch taught him how to inject drugs and that Lynch had injected him with drugs on prior occasions.

Lynch called one witness, his son, who testified that Lynch met him on the morning of October 10. Lynch did not testify or present any other evidence.

The jury found Lynch guilty on all counts. The district court sentenced Lynch to 134 months of imprisonment on count 1. The district court did not impose sentences on counts 2, 3, 4, or 5. Lynch appeals.

D E C I S I O N

I. Evidence of Prior Acts

Lynch first argues that the district court erred by admitting evidence that Lynch previously had injected other persons with drugs.

Lynch's argument is governed by a rule of evidence that states, in relevant part:

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. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. In a criminal prosecution, such evidence shall not be admitted unless . . . the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.

Minn. R. Evid. 404(b) (2017).¹ Evidence of other crimes or bad acts is known in Minnesota as “*Spreigl* evidence.” *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)). A district court must apply a five-part test to determine whether *Spreigl* evidence is admissible. Minn. R. Evid. 404(b). Such evidence is admissible if:

1) the prosecutor gives notice of its intent to admit the evidence consistent with the rules of criminal procedure; 2) the prosecutor clearly indicates what the evidence will be offered to prove; 3) the other crime, wrong, or act and the participation in it by a relevant person are proven by clear and convincing evidence; 4) the evidence is relevant to the prosecutor’s case; and 5) the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.

Id.; see also *State v. Ness*, 707 N.W.2d 676, 685-86 (Minn. 2006). This court applies an abuse-of-discretion standard of review to a district court’s admission of *Spreigl* evidence. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016).

¹Rule 404(b) recently was amended, effective January 1, 2019. *Order Promulgating Amendments to Rules of Evidence*, No. ADM10-8047 (Minn. Nov. 16, 2018). We quote the prior version of the rule, which was in effect at the time of trial.

In this case, the district court admitted the state's *Spreigl* evidence on the ground that it is relevant to whether Lynch had a *modus operandi*. Lynch contends that the evidence should not have been admitted because the fourth and fifth requirements of rule 404(b) are not satisfied.

To satisfy the fourth requirement, the state's *Spreigl* evidence must have a "marked similarity in modus operandi to the charged offense." *Ness*, 707 N.W.2d at 687-88 (quotation omitted). "'*Spreigl* evidence need not be identical in every way to the charged crime, but must instead be sufficiently or *substantially similar* to the charged offense—determined by time, place and modus operandi.'" *Id.* at 688 (quoting *Kennedy*, 585 N.W.2d at 391). "[I]f the prior crime is simply of the same generic type as the charged offense, it ordinarily should be excluded." *State v. Clark*, 738 N.W.2d 316, 346 (Minn. 2007) (alteration in original) (quotation omitted).

In this case, the district court determined that both forms of *Spreigl* evidence were relevant to the "salient issue" of who injected drugs into T.M.'s arm. The district court reasoned that Lynch's statement was "particularly relevant in trying to parse out who was responsible for that act." The district court also reasoned that D.B.'s testimony was "clearly relevant to one of the, if not the most pressing issue here, which is whether or not Mr. Lynch was responsible for injecting the narcotics in [T.M.] or whether in this case [S.M.] was the person responsible for that."

Lynch contends that the state's *Spreigl* evidence is not relevant because it is not sufficiently similar in time, place, or *modus operandi* to the charged offense. He notes that the charged offense occurred in his residence in 2016, but the *Spreigl* incidents occurred at

unspecified locations in 1994 and at other unspecified times. Lynch also asserts that “drug addicts using drugs together, and intravenous drug users helping each other inject drugs, is not especially unique, and the details of the prior acts were otherwise not factually similar to the charged offense.” But the state’s *Spreigl* evidence tends to show that Lynch, in particular, has injected other people with drugs on other occasions. In light of the conflicting evidence as to whether Lynch injected the drugs into T.M.’s arm, the state’s *Spreigl* evidence is relevant. The fourth requirement is satisfied.

To satisfy the fifth requirement, the probative value of the state’s *Spreigl* evidence must not be outweighed by its potential for unfair prejudice. Minn. R. Evid. 404(b). *Spreigl* evidence has probative value if it has a sufficiently close relationship to the charged offense. See *Kennedy*, 585 N.W.2d at 390. *Spreigl* evidence may give rise to “unfair prejudice” if the evidence “lure[s] the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” *State v. Smith*, 749 N.W.2d 88, 95 (Minn. App. 2008) (quotation omitted). In considering whether this requirement is satisfied, a court should balance the relevance of the *Spreigl* evidence, “the State’s need to strengthen weak or inadequate proof,” and the risk that the evidence will be used as propensity evidence. *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009).

In this case, the district court carefully weighed the probative value of the state’s *Spreigl* evidence against its potential for unfair prejudice. The district court denied the state’s request to admit evidence of three additional prior acts. The district court also reasoned that the potential for undue prejudice was mitigated by the fact that D.B. was subject to cross-examination.

Lynch contends that the jury may have misused the evidence as propensity evidence. Lynch also asserts that the state “did not need to prove Lynch injected T.M. with drugs to obtain a conviction for third-degree murder.” The *Spreigl* evidence may not have been necessary to prove the second count of third-degree murder, which required proof of selling, delivering, or distributing controlled substances, but it was necessary to prove the first count of third-degree murder, which required proof that Lynch administered the controlled substances. See Minn. Stat. § 609.195(b). The district court reduced the risk of unfair prejudice by cautioning the jury about the *Spreigl* evidence before D.B.’s testimony and again before the jury deliberated, and we presume that the jury followed those cautionary instructions. See *State v. Riddley*, 776 N.W.2d 419, 428 (Minn. 2009). The fifth requirement is satisfied.

Thus, the district court did not err by allowing the state to introduce evidence that Lynch injected other persons with illegal drugs on prior occasions.

II. Accomplice Testimony

Lynch next argues that the evidence is insufficient to support the jury’s verdicts with respect to the murder and manslaughter offenses on the ground that S.M. was Lynch’s accomplice and her testimony was not corroborated.

“A conviction cannot be had 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.” Minn. Stat. § 634.04 (2016). “The test for determining if a witness is an accomplice is whether 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) (quoting *State v. Lee*, 683 N.W.2d 309, 314 (Minn. 2004)). To be liable as an accomplice, the witness must have played a knowing role in the commission of the crime and taken no steps to thwart its completion. *State v. Barrientos-Quintana*, 787 N.W.2d 603, 610-11 (Minn. 2010). The supreme court has distinguished between “playing a knowing role in the crime” and “mere presence at the scene.” *State v. Scruggs*, 822 N.W.2d 631, 640 (Minn. 2012). The latter does not, by itself, prove that a person is an accomplice because “inaction, knowledge, or passive acquiescence does not rise to the level of criminal culpability.” *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995). But “active participation in the overt act which constitutes the substantive offense is not required, and a person’s presence, companionship, and conduct before and after an offense are relevant circumstances from which a person’s criminal intent may be inferred.” *Id.*

Lynch contends that S.M. is an accomplice because she “played a knowing role in the commission of the crimes,” “made no effort to dissuade or prevent Lynch” from providing drugs to T.M., and “actively aided Lynch to cover up the crime.” He asserts that “[b]ased on her presence, companionship, and conduct before, during, and after the offense, [S.M.] could have been charged and convicted for these offenses.” Lynch also points to the state’s amendment of the complaint to allege that he is liable for aiding and abetting the crime of another, the prosecutor’s statement during closing arguments that he also would be guilty if he aided and abetted S.M., and the state’s grant of immunity to S.M. The state responds that S.M.’s “mere presence” at the scene or “mere knowledge that a crime is going to be committed” is not sufficient to show that she played a knowing role in

the crime. The state notes that there is no evidence that S.M. assisted Lynch or T.M. by providing or administering drugs.

In *Barrientos-Quintana*, the appellant argued that a witness, Hernandez, was an accomplice to first-degree murder and attempted first-degree murder because Hernandez testified that he participated in planning a drive-by shooting and was in the car when the defendant fired a gun. 787 N.W.2d at 608-09, 611. In concluding that Hernandez was an accomplice, the supreme court reasoned that he “chose to remain with the group, knowing that the crime was about to be committed, during the casing of the location, the commission of the shooting, and the flight from the scene and the hiding from the police that occurred afterwards” and “lied about his role in the offense” until the police assured him that a witness was not the same as a suspect. *Id.* at 611-12. In contrast, in *State v. Jackson*, 746 N.W.2d 894 (Minn. 2008), the supreme court concluded that two witnesses who were present before, during, and after a shooting were not accomplices because there was no evidence that they planned to shoot the victim or knew that the appellant intended to kill him. *Id.* at 896, 898-99.

As in *Jackson*, S.M.’s mere presence at the scene of the crime does not render her an accomplice. *See id.* at 898. In his second statement to police officers, Lynch stated that T.M. brought both the heroin and the methamphetamine, that T.M. mixed the drugs, and that T.M. injected the drugs herself. He stated that S.M. was present in the motel room, used drugs, and engaged in sexual activity. But Lynch did not state that S.M. caused T.M. to ingest a fatal dose of drugs. Unlike Hernandez in *Barrientos-Quintana*, S.M.’s testimony gives no indication that she knew that Lynch would inject T.M. with drugs or

that she intended her presence in the motel room to aid Lynch's actions. Rather, S.M.'s role in the events of October 9 and 10, 2016, was more similar to that of T.M. The two women were socializing with each other before they decided to visit Lynch in his motel room. Each of them received from Lynch a syringe with a mixture of heroin and methamphetamine. When Lynch left the motel room, the two women remained in the room. It is true that S.M. initially told police officers that no one in the motel room had been using drugs, but lying to the police after the fact "is not relevant to an accomplice determination." See *Scruggs*, 822 N.W.2d at 641 (quotation omitted).

Thus, S.M. cannot reasonably be considered Lynch's accomplice. Because she is not an accomplice, her testimony does not require corroboration. Therefore, the evidence is not insufficient on the ground that the verdicts are based on uncorroborated accomplice testimony.

III. Instruction on Accomplice Testimony

Lynch also argues that the district court erred by not instructing the jury on the law concerning accomplice testimony. "An accomplice instruction 'must be given in any criminal case in which any witness against the defendant might reasonably be considered an accomplice to the crime.'" *Lee*, 683 N.W.2d at 316 (quoting *State v. Shoop*, 441 N.W.2d 475, 479 (Minn. 1989)). But if there is no testimony from an accomplice, no such instruction need be given. See *Shoop*, 441 N.W.2d at 479. Our conclusion in part II that S.M. was not an accomplice disposes of this argument as well as the prior argument. Because S.M. is not an accomplice, the district court did not err by not instructing the jury on the law concerning accomplice testimony.

IV. Prosecutorial Misconduct

Lynch next argues that the prosecutor engaged in misconduct by not ensuring that the state's witnesses refrained from referring to T.M. as a "victim" when testifying and by referring to T.M. as a "victim" during closing argument.

The right to due process of law includes the right to a fair trial, and the right to a fair trial includes the absence of prosecutorial misconduct. *Spann v. State*, 704 N.W.2d 486, 493 (Minn. 2005); *State v. Ferguson*, 729 N.W.2d 604, 616 (Minn. App. 2007), *review denied* (Minn. June 19, 2007). "It is generally misconduct for a prosecutor to 'knowingly offer inadmissible evidence for the purpose of bringing it to the jury's attention.'" *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014) (quoting *State v. Milton*, 821 N.W.2d 789, 804 (Minn. 2012)). If a prosecutor intentionally elicits inadmissible evidence from a state's witness, reversal of a conviction is appropriate if the inadmissible evidence was prejudicial in the sense that it "played [a] substantial part in convincing the jury of the defendant's guilt." *Id.*; *see also State v. McNeil*, 658 N.W.2d 228, 231-32 (Minn. App. 2003); *cf. State v. Mahkuk*, 736 N.W.2d 675, 689-90 (Minn. 2007) (cautioning that reversal may be appropriate remedy for intentional eliciting of inadmissible evidence even if not prejudicial).

"Even if the prosecutor unintentionally elicits" inadmissible evidence, a defendant may be entitled to a new trial if the inadmissible evidence "prejudiced the defendant's case." *State v. Richmond*, 298 Minn. 561, 563, 214 N.W.2d 694, 695 (1974); *see also McNeil*, 658 N.W.2d at 232. This is so because a prosecutor "has a duty to properly prepare its own witnesses prior to trial." *State v. Underwood*, 281 N.W.2d 337, 342 (Minn. 1979).

“The fact that the prejudicial information was volunteered by the witness does not render it less harmful to defendant.” *State v. Huffstutler*, 130 N.W.2d 347, 348 (Minn. 1964). But the admission of inadmissible and prejudicial evidence is not reversible error if the prosecutor did not intentionally elicit the testimony, the statement at issue was merely a “passing” reference, and the evidence supporting guilt was “overwhelming.” *State v. Haglund*, 267 N.W.2d 503, 505-06 (Minn. 1978). In addition, the unintentional eliciting of inadmissible and prejudicial evidence is not reversible error if it is harmless beyond a reasonable doubt because “the jury’s verdict was surely unattributable to the misconduct.” *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016) (quotation omitted).

Before trial, Lynch asked the district court to require the prosecutor and the state’s witnesses to refer to T.M. as “the decedent” instead of “the victim.” Lynch noted that the coroner’s report described T.M.’s manner of death but did not refer to her as a “victim.” Lynch argued that whether T.M. was a “victim” was a matter for the jury to decide. The prosecutor promptly agreed with the request, thereby making it unnecessary for the district court to formally rule on the motion.

Nonetheless, the state’s witnesses used the word “victim” on four occasions during the trial. First, Officer Lopez testified on direct examination that someone “called 911 for the victim.” Second, Officer Lopez testified on direct examination that he “saw the victim’s body lying motionless.” Third, Officer Marston testified on direct examination that she was advised that “the victim was not in fact in the [motel] lobby.” And fourth, Detective Schultz testified on cross-examination, “Clearly we had a victim that had suffered some sort of traumatic event.” Lynch objected on two of those occasions but did

not make a record concerning the prosecutor's efforts to prepare the witnesses to avoid the word "victim." In addition, the prosecutor once referred to T.M. as the "victim" during his closing argument when he said that Lynch's attorney "repeatedly referred to the victim — excuse me — he repeatedly referred to [T.M.] as a junkie."

There is nothing in the record to indicate that the prosecutor intentionally inserted the word "victim" into the trial. His use of that word on one occasion during closing argument appears to have been inadvertent because he immediately corrected himself. With respect to the prosecutor's preparation of the state's witnesses, there is no record as to what might or might not have occurred before trial. As the state contends, Lynch made simple objections to the use of the word but did not ask the district court to inquire into whether the prosecutor had fulfilled his duty to prepare the state's witnesses. Accordingly, we have no basis for determining that the prosecutor did not inform the state's witnesses of the parties' agreement to avoid the use of the word "victim." In this way, this case must be distinguished from *McNeil*, in which there was a limited record, which revealed that the prosecutor could not recall whether the state's witnesses were made aware of the district court's *in limine* rulings. See 658 N.W.2d at 232.

We also note that the testimony for which Lynch seeks a new trial is not testimony about historical facts relating to this case or to his conduct on a prior occasion. Rather, Lynch sought to avoid the use of a particular word on the ground that it is a characterization with connotations that are inconsistent with the presumption of innocence. But the state's witnesses' use of the word did not introduce additional facts into evidence.

Given Lynch's purposes, we do not assume that each use of the word "victim" prejudiced the defense. Twice during the state's case-in-chief, the district court sustained Lynch's objection to a witness's use of the word "victim." On another occasion, the prosecutor voluntarily cautioned the witness, on the record, to avoid the word. And when the prosecutor used the word in closing argument, he quickly corrected himself. These efforts to rectify the use of a word that the parties had agreed not to use may have emphasized Lynch's point. It appears just as likely, if not more likely, that the district court's sustaining of Lynch's objections helped jurors understand that S.M.'s victimhood was not to be assumed because it was their duty to determine whether she was victimized by Lynch.

Lynch points out that a juror advised the district court, after the first day of trial, that Officer Lopez's use of the word "victim" "ha[d] created some difficulties for her in participating further in this trial" and that she "ha[d] concerns about whether or not she can remain impartial throughout the course of what remains of this trial." The district court discussed the issue with counsel and determined that the juror should remain on the jury and that she could be replaced with an alternate juror later if necessary. She remained on the jury throughout deliberations without any objection from Lynch. That one juror was disturbed by the use of the word "victim" does not mean that all jurors were so affected or that any juror voted to convict Lynch because that word was used.

Thus, Lynch is not entitled to a new trial on the ground that the prosecutor once used the word "victim" and did not ensure that the state's witnesses always avoided the word.

V. Multiple Convictions

Lynch argues that the district court erred by convicting him of five offenses because counts 2, 3, 4, and 5 are included in count 1.

A person “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2016). An included offense may be “(1) A lesser degree of the same crime; or . . . (4) A crime necessarily proved if the crime charged were proved.” *Id.* A conviction is defined as either “a plea of guilty” or “a verdict of guilty by a jury or a finding of guilty by the court” that is “accepted and recorded by the court.” Minn. Stat. § 609.02, subd. 5 (2016). “A guilty verdict alone is not a conviction.” *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007). “Because the testimony and statements recorded in hearing and trial transcripts are often imprecise and unclear with respect to sentencing and conviction orders, we typically look to the official judgment of conviction, which generally appears as a separate entry in the file, as conclusive evidence of whether an offense has been formally adjudicated.” *State v. Pflepsen*, 590 N.W.2d 759, 767 (Minn. 1999); *see also State v. Nodes*, 863 N.W.2d 77, 80-81 (Minn. 2015).

Accordingly, if a defendant is found guilty of more than one charge for the same act,

[T]he court [is] to adjudicate formally and impose sentence on one count only. The remaining conviction(s) should not be formally adjudicated at this time. If the adjudicated conviction is later vacated for a reason not relevant to the remaining unadjudicated conviction(s), one of the remaining unadjudicated convictions can then be formally adjudicated and sentence imposed, with credit, of course, given for time already served on the vacated sentence.

Pflepsen, 590 N.W.2d at 766 (quoting *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984)). “[I]f a defendant’s adjudicated conviction is vacated, a district court does not lose jurisdiction” over the other charges for the same act of which the defendant was also found guilty. *Id.* Instead, “a finding of guilt with respect to those . . . offenses remains intact and the district court retains jurisdiction to formally convict and sentence the defendant for such crimes.” *Id.*

In this case, the jury found Lynch guilty on all five counts. The district court imposed a sentence only on count 1. But the warrant of commitment states that Lynch was convicted of five offenses. Lynch contends that the district court erred by entering formal adjudications on counts 2, 3, 4, and 5 because each of those offenses is included in the offense in count 1. See Minn. Stat. § 609.04, subd. 1; *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012). The state agrees. We agree as well.

Thus, the district court erred by filing a warrant of commitment stating that Lynch was convicted of five offenses. On remand, the district court shall vacate the formal adjudications of Lynch’s convictions on counts 2, 3, 4, and 5 and file an amended warrant of commitment stating that Lynch is convicted only of third-degree murder, the offense alleged in count 1.

Affirmed in part, reversed in part, and remanded.