

*This opinion is nonprecedential except as provided by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
A24-1251**

State of Minnesota,
Respondent,

vs.

Kenneth Tyler Aschan,
Appellant.

**Filed August 8, 2025
Affirmed
Segal, Judge***

Olmsted County District Court
File No. 55-CR-22-4750

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

Michael T. Walters, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Bentley, Presiding Judge; Frisch, Chief Judge; and Segal, Judge.

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

NONPRECEDENTIAL OPINION

SEGAL, Judge

In this direct appeal, appellant challenges his conviction of unlawful possession of a firearm by an ineligible person on two grounds. He alleges that the district court erred (1) in its pretrial ruling that an Iowa conviction of domestic abuse assault by strangulation is equivalent to a Minnesota conviction of domestic assault by strangulation and that the state therefore failed to prove that he had a prior conviction of a “crime of violence”; and (2) by depriving appellant of his right to have a jury decide whether his Iowa conviction constituted a “crime of violence.” We affirm.

FACTS

Respondent State of Minnesota charged appellant Kenneth Tyler Aschan in 2022 with one count of unlawful possession of a firearm by an ineligible person and one count of possession of a pistol without a permit. In its complaint, the state alleged that Aschan was an ineligible person because he had been convicted in Iowa in 2016 of the felony offense of “Domestic Abuse–Impeding Air/Blood Flow Causing Bodily Injury” under Iowa Code § 708.2A(5) (2016) (the Iowa offense). The state alleged in the complaint that his conviction of the Iowa offense qualifies as a “crime of violence” that rendered him ineligible to possess a firearm under Minnesota law. *See* Minn. Stat. § 624.713, subd. 1(2) (2020). The complaint cited Minnesota’s domestic-assault-by-strangulation statute, Minn. Stat. § 609.2247, subd. 2 (2014) (the Minnesota offense), as the comparable Minnesota crime.

Aschan filed a motion to dismiss the ineligible-person charge for lack of probable cause. He argued that the Iowa conviction contains a lesser criminal-intent requirement (“knowingly”) than the Minnesota offense (“intentionally”). He argued that, consequently, his Iowa offense does not qualify as a “crime of violence” under Minnesota law.

The district court found that the Iowa offense is functionally equivalent to the Minnesota offense and denied Aschan’s motion. The district court compared the two statutes, noting that both require proof of an assault and the existence of a domestic relationship. The district court also identified in its order the difference in wording between the two offenses—that the Minnesota offense requires “intentionally impeding normal breathing or circulation of the blood” of another, while the Iowa offense “is committed by ‘knowingly impeding the normal breathing or circulation of the blood of another’” person.

The district court cited the Minnesota Criminal Jury Instruction Guides, stating that “intentionally” means that the actor “either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result.” *See* 10 *Minnesota Practice*, CRIMJIG 3.32 (2015). The court noted that, while knowingly is not defined in Iowa law, the Iowa courts have looked to the uniform criminal jury instructions, which define having knowledge of something as having “a conscious awareness” of that thing. *See, e.g., State v. Buchanan*, 549 N.W.2d 291, 294 (Iowa 1996) (quoting Iowa State Bar Ass’n, Iowa Crim. Jury Instruction 200.3 (1988)). The district court thus found no meaningful distinction between the two statutes because it could “see no plausible way that [d]efendant could perform the conduct resulting in his Iowa conviction without engaging in that conduct intentionally.”

At a subsequent hearing, the district court commented that, based on its determination that the Iowa and Minnesota offenses were functionally equivalent, the court planned to instruct the jury that Aschan's Iowa offense is a "crime of violence" as a matter of law under Minn. Stat. § 624.713, subd. 1(2). And when the case was assigned to a different judge for trial, the judge confirmed that intent.

Instead of proceeding to a jury trial, Aschan entered into an agreement with the state to submit the case to the court for trial based on stipulated evidence to preserve his right to challenge the district court's pretrial ruling. At the hearing concerning Aschan's waiver of his right to a jury trial, Aschan's counsel provided the following explanation on the record of the issues Aschan was seeking to preserve for appeal:

[O]ne of the confusing things is we kind of have one big issue, but a few smaller issues that are also in play that . . . mak[e] a contested trial unnecessary—all that stuff. There [are] three different [kinds] of things that are going together.

. . . .
One is the pretrial ruling . . . denying [our motion to dismiss for lack of probable cause.]

. . . .
Another is that that is a matter of law; that that makes the Iowa conviction a matter of law conviction under Minnesota law.

. . . .
And then the third being that the jury would be instructed that it is a crime of violence under Minnesota law in jury instructions?

At the close of the hearing, the district court found that Aschan sufficiently waived his jury-trial right.

Pursuant to the parties' agreement, the state submitted eleven exhibits to the district court as the trial evidence. The exhibits included certified records from the Iowa courts related to Aschan's Iowa offense.

The district court found Aschan guilty of both being an ineligible person in possession of a firearm and possessing a firearm without a permit. The district court entered convictions on both charges and sentenced him on the ineligible-person charge to 60 months' imprisonment.

DECISION

In our analysis, we address first Aschan's argument that his conviction must be reversed because his Iowa conviction is not the equivalent of the Minnesota offense. We then address Aschan's argument that the district court violated his jury-trial right by deciding as a matter of law that Aschan had committed a "crime of violence" under the ineligible-person statute.

I. The district court did not err in determining that the Iowa conviction was the equivalent of a conviction of the Minnesota offense.

Aschan contends that the district court erred when it determined that he was ineligible to possess a firearm because of his Iowa conviction. We review *de novo* questions of whether an out-of-state conviction is equivalent to a Minnesota offense. *See State v. Martin*, 941 N.W.2d 119, 124-25 (Minn. 2020) (treating the issue of whether an out-of-state offense is equivalent to a Minnesota offense as a "sufficiency-of-the-evidence" challenge subject to *de novo* review).

Minnesota’s ineligible-person statute makes it a felony for a person to possess a firearm if the person has been convicted, “in this state or elsewhere,” of a “crime of violence.” Minn. Stat. § 624.713, subd. 1(2). Subdivision 1(2) of the statute expressly provides that, for the purposes of the offense, a “crime of violence includes crimes in other states or jurisdictions which would have been crimes of violence as herein defined if they had been committed in this state.” *Id.* The Minnesota offense is identified as a “crime of violence” in the ineligible person law. *See* Minn. Stat. § 624.712, subd. 5 (2020) (“‘Crime of violence’ means: felony convictions of the following offenses: . . . 609.2247 (domestic assault by strangulation) . . .”).

The test for determining whether a crime in another state would have been a “crime of violence” if committed in Minnesota turns on whether “proving the elements of the out-of-state offense would necessarily prove a violation of [the] Minnesota law.” *Martin*, 941 N.W.2d at 124 (analyzing whether a person was required to register as a predatory offender based on an out-of-state conviction). Conversely, “if the elements of the out-of-state offense could be proven without proving a violation of Minnesota law, then the out-of-state conviction would not be a violation of a Minnesota offense.” *Id.*

The Iowa Code provides that a person commits a felony “domestic abuse assault . . . by knowingly impeding the normal breathing or circulation of the blood of another by applying pressure to the throat or neck of the other person or by obstructing the nose or mouth of the other person and causing bodily injury.” Iowa Code § 708.2A(5). The phrase “domestic abuse assault” is further defined in the Iowa Code as “an assault, as defined in section 708.1, which is domestic abuse as defined” in a section of Iowa’s domestic abuse

statute, Iowa Code § 236.2(2) (2016). Iowa Code § 708.2A(1) (2016). An “assault” is then defined, as relevant here, as an act, “without justification,”

which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, . . . [or] which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

Iowa Code § 708.1(2) (2016).

The Minnesota Statutes provide that “whoever assaults a family or household member by strangulation is guilty of a felony.” Minn. Stat. § 609.2247, subd. 2. Strangulation is defined as “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.” Minn. Stat. § 609.2247, subd. 1(c) (2014). “Intentionally” is defined in the Minnesota Statutes to mean that “the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result,” and “the actor must have knowledge of those facts which are necessary to make the actor’s conduct criminal and which are set forth after the word ‘intentionally.’” Minn. Stat. § 609.02, subd. 9(3) (2014).

Aschan argues that proving the elements of the Iowa offense would not prove a violation of the Minnesota offense because the Iowa offense only requires proof that the offender “knowingly” impeded the victim’s breathing or blood circulation, while the Minnesota offense requires proof that the offender “intentionally” impeded the victim’s

breathing or blood circulation. He maintains that proof that an act was “knowing” does not establish the requisite level of intent to be found guilty of the Minnesota offense.

But Aschan’s argument fails to take into account all of the required elements of the Iowa offense. Specifically, he ignores the fact that the Iowa offense requires proof not only that the actor “knowingly impeded” the victim’s breathing or circulation, but that the actor also committed an “assault.” An assault under the Iowa Code requires proof, as relevant here, of an *intent* “to cause pain or injury,” “physical contact which will be insulting or offensive,” or the “fear of immediate physical contact which will be painful, injurious, insulting, or offensive.” Iowa Code § 708.1(2). Thus, when all elements of the Iowa offense are considered, we agree with the district court’s assessment that there is “no plausible way” that an actor could knowingly impede a person’s breathing or circulation with the intent to cause pain or injury, offensive physical contact, or the fear of such contact, without also acting to “intentionally impeded” the person’s breathing or circulation.

Because proof of intent is a required element of the Iowa offense, we conclude that proof of the required elements for a conviction of the Iowa offense would “necessarily prove a violation” of the Minnesota offense. *Martin*, 941 N.W.2d at 124. The district court thus correctly determined that the Iowa and Minnesota offenses are equivalent for purposes of the ineligible-person statute.

But Aschan also claims that, even if the offenses are functionally equivalent, the district court erred in its analysis because it looked to the allegations set out in the complaint in the Iowa case in analyzing whether the Iowa conviction is equivalent to the Minnesota

offense. Specifically, the district court quoted an allegation contained in the Iowa complaint in its “Statement of Facts” section of the memorandum accompanying its order.¹ If the district court relied on factual allegations in the complaint in its analysis, we agree with Aschan that this would constitute an error. *See id.* (stating that the determination of whether an out-of-state conviction would be a violation of Minnesota law depends on an analysis of the *elements* of each offense); *Erlinger v. United States*, 144 S. Ct. 1840, 185 (2024) (stating that “a judge may do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of” (quotation omitted)). Any such error, however, would be harmless because the district court’s determination that the Iowa and Minnesota offenses are equivalent is subject to de novo review. *See Martin*, 941 N.W.2d at 122 (applying de novo review); Minn. R. Crim. P. 31.01 (stating that harmless error must be disregarded).

II. Aschan was not deprived of his jury-trial rights.

Aschan contends that he was deprived of his right to a jury trial on the issue of whether the Iowa offense constitutes a “crime of violence” for the purposes of the ineligible-person statute. He points to the district court’s pretrial statements that the jury would be instructed that the Iowa offense qualifies as a “crime of violence.” The state argues that Aschan forfeited this argument when he waived his right to a jury trial and agreed to submit the case to the court based on stipulated evidence.

¹ The quote is set out in the following sentence in the district court’s memorandum: “According to the complaint filed in the Iowa case, Defendant choked the mother of his child ‘for long enough she felt as though she was going to pass out.’”

At the outset, we note that the record is not clear concerning the terms upon which Aschan agreed to a stipulated-evidence trial and which issues were properly preserved for appeal. But we need not address this issue because we conclude that any error by the district court would be harmless for the following reasons: (1) Aschan does not dispute that he was convicted of the Iowa offense; (2) the district court correctly determined as a matter of law that the Iowa conviction is equivalent to the Minnesota offense; and (3) given (1) and (2), a jury could not answer the question of whether the Minnesota offense is a “crime of violence” for the purposes of the ineligible-person statute in any way but in the affirmative—it is uncontroverted that the Minnesota offense is contained in the list of offenses defined as “crimes of violence” under the statute, Minn. Stat. § 624.712, subd. 5. Because it is incontrovertible that the Minnesota offense constitutes a “crime of violence” under the ineligible-person statute, we conclude that any error by the district court would be harmless. *See, e.g., Neder v. United States*, 527 U.S. 1, 18 (1999) (ruling that a failure to include an element of an offense in a charge to a jury could be a harmless error when the “omitted element is supported by uncontroverted evidence”).

Affirmed.